

7-28-2008

Spokane Structures v. Equitable Inv. Clerk's Record v. 1 Dckt. 35349

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LAW CLERK 1 of 2

IN THE SUPREME COURT
OF THE STATE OF IDAHO

SPOKANE STRUCTURES, INC.,
a Washington Corporation

Petitioner/Appellant

vs. LAW CLERK

EQUITABLE INVESTMENT, LLC.,
AKA Systems Technologies

Respondent

SEE AUGMENTATION RECORD

TRANSCRIPT ON APPEAL

In the District Court of the First Judicial District of
the State of Idaho, in and for the County of Kootenai

ATTORNEY FOR APPELLANTS

Steven C. Wetzel

ATTORNEY FOR RESPONDENTS

Patrick E. Miller

FILED COPY
SUPREME COURT DOCKET #35349

JUL 28 2008

Supreme Court _____ Court of Appeals _____
Entered on ATS by: _____

35349

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a	)	CV 2007-4062
Washington Corporation)	
Petitioner/Appellant)	
)	
vs.)	
)	
EQUITABLE INVESTMENT, LLC.,)	
AKA Systems Technologies	)	SUPREME COURT
	)	DOCKET 35349
Respondent.)	
)	
)	
)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for
the County of Kootenai.

HONORABLE JOHN PATRICK LUSTER
District Judge

Attorney for Respondent
Patrick E Miller
Paine Hamblen
701 Front Avenue, Suite 101
Coeur d'Alene, ID 83816

Attorney for Appellant
Steven C. Wetzel
Wetzel & Wetzel
1322 Kathleen Avenue, Suite 2
Coeur d'Alene, ID 83815

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Spokane Structures Inc vs. Equitable Investment LLC

Date	Code	User	Judge
6/7/2007	NCOC	MCCORD	New Case Filed - Other Claims
		MCCORD	Filing: A1 - Civil Complaint, More Than \$1000 No Prior Appearance Paid by: Wtzel & Wetzels Receipt number: 0747874 Dated: 6/7/2007 Amount: \$88.00 (Check) For: [NONE]
	COMP	MCCORD	Complaint Filed
	SUMI	MCCORD	Summons Issued
6/13/2007		CRAMER	Filing: I1A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: Paine Hamblen Receipt number: 0748611 Dated: 6/13/2007 Amount: \$58.00 (Check) For: [NONE]
	NOAP	CRAMER	Notice Of Appearance Patrick Miller and Amy Bistline
6/28/2007	MOTN	SRIGGS	Motion to Enlarge Time to Answer Plaintiff's First Set of Interrogatories, Requests for Admission, and Requests for Production of Documents
	MOTN	SRIGGS	Motion to Enlarge Time to Answer Complaint
	AFFD	SRIGGS	Affidavit of Amy C Bistline in Support of Motion to Enlarge Time to Answer Complaint
	AFFD	SRIGGS	Affidavit of Amy C Bistline in Support of Motion to Enlarge Time to Answer Plaintiff's First Set of Interrogatories, Requests for Admission, and Requests for Production of Documents
7/23/2007	HRSC	BOOTH	Hearing Scheduled (Motion 09/12/2007 03:00 PM) for enlargement of time to answer + discovery - 15 minutes
	NOHG	MCCOY	Notice Of Hearing
8/7/2007		BOWLES	Filing: I1B - Civil Answer Or Appear. More Than \$1000 With Prior Appearance Paid by: Paine Hamblen Receipt number: 0756550 Dated: 8/7/2007 Amount: \$14.00 (Check) For: [NONE]
	ANSW	BOWLES	Defendant's answer to plaintiff's complaint
	NOTC	BOWLES	Notice of service of defendant's answers and responses to plaintiff's first set of interrogatories, requests for admission, and requests for production of documents
8/9/2007	NTSV	HUFFMAN	Notice Of Service of Defendant's Supplemental Response to Plaintiff's Interrogatory No 9
8/10/2007	HRVC	BOOTH	Hearing result for Motion held on 09/12/2007 03:00 PM: Hearing Vacated for enlargement of time to answer + discovery - 15 minutes
	NOTC	BOOTH	Notice to vacate hearing (9/12/7)
8/17/2007	NOTC	HULL	Notice of Audio Visual Deposition Duces Tecum of Bruce Tomblin
	NOTC	HULL	Notice of Audio Visual Deposition Duces Tecum of Linda Tomblin

Date: 6/19/2008

First Judicial District Court - Kootenai County

User: LSMITH

Time: 05:38 PM

ROA Report

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Case: CV-2007-0004062 Current Judge: John P. Luster

Spokane Structures Inc vs. Equitable Investment LLC

Spokane Structures Inc vs. Equitable Investment LLC

Date	Code	User		Judge
9/13/2007	NOTC	GBROWN	Notice of Audio Visual Deposition Duces Tecum of Bart Klang, Assistant VP of Mountain West Bank	John P. Luster
	SDTR	GBROWN	Subpoena Duces Tecum Returned for Bart Klang, Assistant VP Mountain West Bank	John P. Luster
10/3/2007	HRSC	BOOTH	Hearing Scheduled (Status Conference 12/04/2007 03:00 PM)	John P. Luster
		BOOTH	Notice of Hearing	John P. Luster
11/9/2007	MISC	HUFFMAN	Amended Notice of Audio Visual Deposition Duces Tecum of Bruce Tomblin	John P. Luster
12/4/2007	INHD	WATKINS	Hearing result for Status Conference held on 12/04/2007 03:00 PM: Interim Hearing Held	John P. Luster
	HRSC	WATKINS	Hearing Scheduled (Jury Trial Scheduled 06/02/2008 09:00 AM) 4 Day Trial	John P. Luster
12/12/2007	HRSC	BOOTH	Hearing Scheduled (Motion for Summary Judgment 03/12/2008 03:00 PM)	John P. Luster
1/11/2008	NTSV	SHEDLOCK	Notice Of Service on Patrick E. Miler and Amy C. Bistine 1/11/08	John P. Luster
2/11/2008	NTSV	LUNNEN	Notice Of Service Of Defendant's Responses To Plaintiff's Second Request For Production Of Documents	John P. Luster
2/12/2008	NOTH	MCCORD	Notice Of Hearing	John P. Luster
	MISC	MCCORD	def's submission of materials in support of motion for summary judgment	John P. Luster
	MNSJ	MCCORD	def's Motion For Summary Judgment	John P. Luster
	MEMO	MCCORD	def's Memorandum of points & authorities in support of its motion for summary judgment	John P. Luster
2/19/2008	NTSV	BAXLEY	Notice Of Service of Defendant's Supplemental Responses to Plaintiff's Second Request for Production of Documents	John P. Luster
2/26/2008	AFFD	MCCOY	Affidavit of Kevin P. Holt in Support of Plaintiff's Motion for Extension of Time to Respond to Defendant's Motion for Summary Judgment	John P. Luster
	MOTN	MCCOY	Plaintiff's Motion for Extension of Time to Respond to Defendant's Motion for Summary Judgment	John P. Luster
	NOHG	MCCOY	Notice Of Hearing	John P. Luster
2/27/2008	MEMO	BAXLEY	Memorandum In Opposition To Defendant's Motion For Summary Judgment	John P. Luster
	AFFD	BAXLEY	Affidavit of Rob Lewis In Support of Plaintiff's Memorandum In Opposition To Defendant's Motion For Summary Judgment	John P. Luster
	AFFD	BAXLEY	Affidavit of Kevin P Holt In Support of Plaintiff's Memorandum In Opposition to Defendant's Motion for Summary Judgment	John P. Luster
	MISC	BAXLEY	Statement of Contested Facts	John P. Luster

Spokane Structures Inc vs. Equitable Investment LLC

Date	Code	User	Judge
3/5/2008	MEMO	BAXLEY	Defendant's Reply Memorandum In Support of Motion for Summary Judgment
3/12/2008	INHD	BOOTH	Hearing result for Motion for Summary Judgment held on 03/12/2008 03:00 PM: Interim Hearing Held +motion for extension of time to respond to SJ motion
3/21/2008	TRAN	BOOTH	Transcript Filed - Summary Judgment hearing 3/12/8
4/15/2008	ORDR	BOOTH	Order - granting summary judgment
4/17/2008	MEMO	THOMPSON	Defendants' Memorandum Of Costs Pursuant To Rule 54(d)(5), I.R.C.P.
	AFFD	THOMPSON	Affidavit In Support Of Defendant's Claim For Attorney Fees
4/30/2008	MEMO	BAXLEY	Plaintiff's Memorandum In Support of Motion to Disallow Costs and Attorney Fees
	MOTN	BAXLEY	Motion to Disallow Costs and Attorney Fees
5/1/2008	HRSC	BOOTH	Hearing Scheduled (Motion 05/21/2008 03:00 PM) re: objection to attorney fees
5/2/2008	NOHG	JANUSCH	Notice Of Hearing
	ADDM	BAXLEY	Addendum To Cost Bill
5/14/2008	MEMO	SHEDLOCK	Memorandum In Support Of Defendant's Cost Bill
5/16/2008	MEMO	BAXLEY	Memorandum In Support of Defendant's Cost Bill
5/19/2008	FILE	ROBINSON	New File Created *****2 of 2*****
5/21/2008	DCHH	BOOTH	Hearing result for Motion held on 05/21/2008 03:00 PM: District Court Hearing Held Court Reporter: Alison Stovall Number of Transcript Pages for this hearing estimated: Under 100 pages
5/23/2008		MCCORD	Filing: T - Civil Appeals To The Supreme Court (\$86.00 Directly to Supreme Court Plus this amount to the District Court) Paid by: S Wetzel Receipt number: 0796712 Dated: 5/23/2008 Amount: \$15.00 (Check) For: [NONE]
	BNDC	MCCORD	Bond Posted - Cash (Receipt 796714 Dated 5/23/2008 for 100.00)
	BNDC	MCCORD	Bond Posted - Cash (Receipt 796715 Dated 5/23/2008 for 200.00)
	APSC	MCCORD	Appealed To The Supreme Court
	NOTC	MCCORD	Notice of Appeal
5/29/2008	HRVC	BOOTH	Hearing result for Jury Trial Scheduled held on 06/02/2008 09:00 AM: Hearing Vacated 4 Day Trial
6/17/2008	CVDI	LSMITH	Civil Disposition entered for: Equitable Investment LLC, Defendant; Spokane Structures Inc, Plaintiff. Filing date: 6/17/2008

Date: 6/19/2008

First Judicial District Court - Kootenai County

User: LSMITH

Time: 05:38 PM

ROA Report

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Case: CV-2007-0004062 Current Judge: John P. Luster

Spokane Structures Inc vs. Equitable Investment LLC

Spokane Structures Inc vs. Equitable Investment LLC

Date	Code	User		Judge
6/17/2008	FJDE	LSMITH	Order	John P. Luster

SUMMONS ISSUED

JUN 07 2007

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED: 747874

2007 JUN -7 PM 3: 13

CLERK DISTRICT COURT

DEPUTY

Steven C. Wetzel, ISB #2988
Kevin P. Holt, ISB #7196
WETZEL & WETZEL, PLLC
1322 Kathleen Ave., Suite 2
Coeur d'Alene, Idaho 83815-8339
Telephone: (208) 667-3400
Facsimile: (208) 664-6741

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMSTECHNOLOGIES,

Defendant.

Case No. CV-07- 4062

COMPLAINT

Fee: \$88.00

Category: A1

COMES NOW the above-named Plaintiff, by and through its attorneys of record,
WETZEL & WETZEL, P.L.L.C., and hereby complains and alleges as follows.

Each and every allegation, claim, statement or averment set forth in this
complaint, or any separate count herein, is hereby re-alleged and re-asserted as to
every other count set forth herein.

1.

The Plaintiff, SPOKANE STRUCTURES, INC. (hereinafter "SPOKANE"), is a Washington corporation doing business in Idaho.

2.

The Defendant, EQUITABLE INVESTMENT, L.L.C., a.k.a. SYSTEMSTECHNOLOGIES (hereinafter "EQUITABLE"), is an Idaho limited liability company doing business in Idaho.

3.

On September 28, 2006, SPOKANE and EQUITABLE entered into an agreement whereby SPOKANE would provide design and construction work for EQUITABLE under the terms of a written agreement, a copy of which is attached hereto as Exhibit "A," (hereinafter the "Contract")

4.

EQUITABLE has refused to comply with the terms of the Contract.

5.

SPOKANE conferred a benefit to EQUITABLE and is entitled to compensation for that benefit.

6.

In addition to and/or in the alternative to the written, enforceable contract between the parties, the parties also agreed, verbally and/or via acts or gestures of performance, that SPOKANE would provide valuable goods and/or services to EQUITABLE, and that SPOKANE would receive valuable compensation for such goods and/or services, all in contemplation of an implied-in-fact contract.

7.

SPOKANE, in consideration of a promise by EQUITABLE, conferred a benefit to EQUITABLE and EQUITABLE should be estopped from retaining such benefit without compensating SPOKANE for same.

COUNT I
BREACH OF CONTRACT
(SPECIFIC PERFORMANCE)

8.

EQUITABLE is in breach of the Contract.

9.

SPOKANE is entitled to specific performance of the Contract.

10.

EQUITABLE should be ordered to carry out the terms of the Contract as executed between the parties.

11.

As a result of EQUITABLE's wrongful refusal to comply with the terms of the Contract, SPOKANE is entitled to an award of attorney's fees under Idaho Code Section 12-120 and other applicable law. In the event of default, said attorney's fees should be set at \$5,000.

COUNT II
BREACH OF CONTRACT
(MONEY DAMAGE)

12.

As an alternative and/or in addition to the remedy sought in the above Count, SPOKANE is entitled to money damages for the willful breach of contract by EQUITABLE.

13.

The Contract is a binding agreement between SPOKANE and EQUITABLE.

14.

EQUITABLE breached the Contract by refusing to carry out the terms of the Contract.

15.

SPOKANE was fully prepared to carry out its obligations under the Contract.

16.

The amount of damages for which SPOKANE is entitled to for breach of contract exceeds \$10,000.

17.

As a result of EQUITABLE's wrongful refusal to comply with the terms of the Contract, SPOKANE is entitled to an award of attorney's fees under Idaho Code Section 12-120 and other applicable law. In the event of default, said attorney's fees should be set at \$5,000.

COUNT III
QUASI-CONTRACT
UNJUST ENRICHMENT/RESTITUTION

18.

As an alternative and/or in addition to the remedies sought in the above Counts, SPOKANE conferred a benefit upon EQUITABLE, by providing goods and/or services to EQUITABLE.

19.

EQUITABLE appreciated such benefit, and accepted such benefit under circumstances that it would be inequitable for EQUITABLE to retain the benefit without payment of the value thereof.

20.

SPOKANE is entitled to compensation for conferring such benefit on EQUITABLE in an amount which shall be determined at trial.

COUNT IV
CONTRACT IMPLIED-IN-FACT

21.

As an alternative and/or in addition to the remedies sought in the above Counts, the circumstances of this action imply a request by EQUITABLE for performance by SPOKANE in the form of design and construction of an office and warehouse.

22.

The circumstances imply a promise by EQUITABLE to compensate SPOKANE for such performance.

23.

SPOKANE performed or partially performed as requested, entitling it to recover the reasonable value of the services rendered or the goods received, the precise amount of which shall be proven at trial.

COUNT V
PROMISSORY ESTOPPEL

24.

As an alternative and/or in addition to the remedies sought in the above Counts, SPOKANE relied on a specific promise by EQUITABLE to compensate SPOKANE for providing goods and/or services.

25.

As a result of SPOKANE relying on EQUITABLE's promise, SPOKANE suffered substantial economic loss.

26.

Such economic loss to SPOKANE was or should have been foreseeable by EQUITABLE.

27.

SPOKANE's reliance on the promise of EQUITABLE was reasonable.

28.

SPOKANE performed or partially performed in reliance on the promise of EQUITABLE, entitling SPOKANE to recover the amounts of the economic loss suffered, the precise amount of which shall be proven at trial.

WHEREFORE, SPOKANE prays for judgment as follows:

1. That EQUITABLE be ordered to specifically perform its obligations under the Contract.
2. That in the alternative and/or in addition, EQUITABLE be ordered to pay damages in an amount to be determined by the Court and in excess of \$10,000.00 for EQUITABLE's breach of CONTRACT.
3. That in the alternative and/or in addition, EQUITABLE be ordered to pay damages under the principle of quasi-contract in an amount to be determined by the Court and in excess of \$10,000.00.
4. That in the alternative and/or in addition, EQUITABLE be ordered to pay damages under the principle of implied-in-fact contract in an amount to be determined by the Court and in excess of \$10,000.00.
5. That in the alternative and/or in addition, EQUITABLE be ordered to pay damages under the principle of promissory estoppel in an amount to be determined by the Court and in excess of \$10,000.00.
6. For reasonable costs and attorney fees pursuant to Idaho law.
7. For all other relief this Court shall deem just and equitable.

DEMAND FOR JURY TRIAL

Demand is hereby made for jury trial of a jury not less than twelve jurors.

DATED this 17th day of June, 2007.

WETZEL & WETZEL, P.L.L.C.


Kevin P. Holt
Attorneys for Plaintiff

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DESIGN/BUILD AGREEMENT

This agreement between SPOKANE STRUCTURES, INC. and Systemstechnologies sets forth the scope of the work to be performed by SPOKANE STRUCTURES, INC. in the design and construction of an office and warehouse of approximately 7950 sq. ft. located in Hayden, Idaho. Spokane Structures, Inc. agrees to design, engineer, and draft plans in preparation of all documents/drawings required to enable the owner and contractor to agree on a final design and cost of construction to be performed. As a minimum the drawings to be prepared should include:

1. Site and location plans to determine building location and elevation, set backs from property lines and utility locations.
2. Building foundations, slabs and sidewalks.
3. Building floor plans.
4. Schedules of doors, windows, finishes, etc.
5. Exterior building elevation to show style, form and finish.
6. Building sections to show sufficient detail required to achieve style and to show code compliance.
7. Electrical system layout.
8. Heating, air conditioning and ventilation to show all equipment and ducting.
9. Plumbing system layout including location of all special requirements, hose bibs, etc.

A final cost for construction will be provided upon completion of the plans and approval from the City of Hayden Building Department. The cost for construction is not to exceed \$605,000.00, which includes all costs associated with construction, including overhead and profit. Change orders will be handle in writing only, and billed at cost of change plus 20% for profit and overhead. Billing for construction will be monthly progress billing on the percentage of completion method. This agreement is contingent upon the owners getting financing. Should financing not be obtained Spokane Structures, Inc. will be paid \$5000.00 for the plans. A \$2,500.00 retainer is required at signing of this agreement.

By RS 9/28/06
SPOKANE STRUCTURES, INC. DATE

By Equitable Investment, LLC
Jordan K. Turek Member Manager
OWNER DATE

By _____
OWNER DATE



019

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2007 JUN 13 AM 11:15

CLERK DISTRICT COURT

DEPUTY

PATRICK E. MILLER - ISBA #1771
AMY C. BISTLINE - ISBA #7073
PAINE HAMBLÉN LLP
701 Front Avenue, Suite 101
P.O. Box E
Coeur d'Alene, ID 83816-2530
Telephone: (208) 664-8115
Facsimile: (208) 664-6338

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMS TECHNOLOGIES,

Defendant.

)
) Case No. CV-07-4062
)
) **NOTICE OF APPEARANCE**
)
) **FEE CATEGORY: I(1)(a)**
)
) **FEE: \$58.00**
)
)
)
)

NOTICE IS HEREBY GIVEN that PATRICK E. MILLER and AMY C. BISTLINE, of the
firm of PAINE HAMBLÉN LLP, 701 E. Front Avenue, Suite 101, Coeur d'Alene, Idaho, appear in
the above-entitled matter as attorney of record for defendant.

DATED this 12 day of June, 2007.

PAINE HAMBLÉN LLP

By Patrick E. Miller For
PATRICK E. MILLER
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12 day of June, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Steven C. Wetzel
Kevin P. Holt
WETZEL & WETZEL, PLLC
1322 Kathleen Avenue, Suite 2
Coeur d'Alene, ID 83815-8339

- ☒ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX) to: 664-6741

Patrick E. Miller
Patrick E. Miller

H:\CDADOCS\32727\00002\plead\C0147666.WPD:jaf

PATRICK E. MILLER - ISBA #1771
AMY C. BISTLINE - ISBA #7073
PAINE HAMBLIN LLP
701 Front Avenue, Suite 101
P.O. Box E
Coeur d' Alene, ID 83816-2530
Telephone: (208) 664-8115
Facsimile: (208) 664-6338

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED: 756550

2007 AUG -3 PM 3:41

CLERK DISTRICT COURT
Oliver H. Bowles
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a)	
Washington Corporation,	)	Case No. CV-07-4062
)	
Plaintiff,	)	DEFENDANT'S ANSWER TO
	)	PLAINTIFF'S COMPLAINT
vs.)	
	)	FEE CATEGORY: I.1.b
EQUITABLE INVESTMENT, L.L.C., an	)	FEE: \$14.00
Idaho Limited Liability Company, a.k.a.)	
SYSTEMS TECHNOLOGIES,)	
)	
Defendant.)	

COMES NOW, the defendant, Equitable Investment, LLC, an Idaho limited liability company, in answer to the plaintiff's complaint, and admits, denies or alleges as follows:

I.

In answer to paragraph 1, this defendant admits the allegations contained therein.

II.

In answer to paragraph 2, this defendant admits that Equitable Investment, LLC, is an Idaho limited liability company doing business in Idaho. This defendant denies that Systems Technologies is an assumed business name of Equitable Investment, LLC. This defendant alleges that Systems Technologies is a separate corporation.

III.

In answer to paragraph 3, this defendant admits that it entered into an agreement dated September 28, 2006. This defendant denies that the contract constituted a final construction work agreement.

IV.

In answer to paragraph 4, this defendant denies the allegations contained therein.

V.

In answer to paragraph 5, this defendant denies the allegations contained therein.

VI.

In answer to paragraph 6, this defendant denies the allegations contained therein.

VII.

In answer to paragraph 7, this defendant denies the allegations contained therein.

VIII.

In answer to paragraphs 8, 9, 10, 11 and 12, this defendant denies the allegations contained therein.

IX.

In answer to paragraph 13, this defendant admits that the contract of September 28, 2006, constitutes an agreement between plaintiff and defendant. This defendant alleges that it has fully complied with the terms and conditions of the contract. This defendant alleges that plaintiff was in breach of the terms of the contract. This defendant alleges that the contract is limited in purpose according to its terms.

X.

In answer to paragraph 14, this defendant denies the allegations contained therein.

XI.

In answer to paragraph 15, this defendant denies the allegations contained therein. This defendant alleges that plaintiff proposes an additional contract, to which this defendant did not agree.

XII.

In answer to paragraphs 16 and 17, this defendant denies the allegations contained therein.

XIII.

In answer to paragraphs 18, 19 and 20, this defendant denies the allegations contained therein.

XIV.

In answer to paragraphs 21, 22, 23, 24, 25, 26, 27 and 28, this defendant denies the allegations contained therein.

AFFIRMATIVE DEFENSES

COMES NOW, the defendant, Equitable Investment, LLC, and by way of affirmative defense alleges as follows:

I.

Plaintiff's complaint fails to state a claim against this defendant upon which relief can be granted.

II.

This defendant complied with the terms and conditions of the contract between plaintiff and defendant and fully performed its obligations thereunder.

III.

That the defendant paid all amounts as required under the September 28, 2006 contract and that no other amounts are due or owing under the terms or conditions of that contract. That the plaintiff provided plans and construction estimates, which would not be approved by the City of Hayden for a building permit and which costs exceeded the maximum cost for construction figure as set forth within the September 28, 2006 contract.

IV.

That the defendant did not enter into a contract to construct a building, since plaintiff did not provide plans in accordance with the terms and conditions of the September 28, 2006 contract or which would be approved by the City of Hayden, or which would meet the maximum cost for construction figure of the September 28, 2006 contract.

V.

That there was no meeting of the minds between the parties as to a contract for construction.

VI.

That there did not constitute a specific promise or agreement between the parties for construction of a building.

VII.

That there did not constitute a sufficiently definite agreement between the parties for construction of a building.

VIII.

That the negotiations between the parties did not result in a meeting of the minds, a sufficiently definite agreement and did not constitute an implied in fact contract.

IX.

That the plaintiff was compensated by defendant in accordance with the terms of the September 28, 2006 contract.

X.

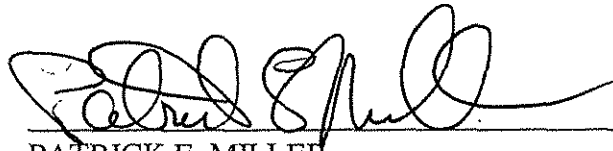
That plans provided by plaintiff were based upon drawings initially provided by defendant, which defendant paid a third party to produce.

XI.

That the plans proposed by the plaintiff are not capable of approval for a building permit and do not provide a benefit to the defendant.

WHEREFORE, having answered, this defendant prays that plaintiff's complaint be dismissed; that this defendant be awarded its costs and attorney fees herein; for such other and further relief as the Court deems just.

DATED this 3rd day of August, 2007.



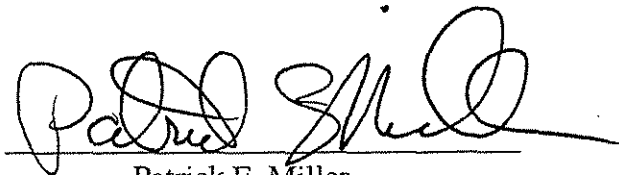
PATRICK E. MILLER
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of August, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Steven C. Wetzel
Kevin P. Holt
WETZEL & WETZEL, PLLC
1322 Kathleen Avenue, Suite 2
Coeur d'Alene, ID 83815-8339

- ☐ U.S. MAIL
☒ HAND DELIVERED
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX) to: 664-6741



Patrick E. Miller

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PATRICK E. MILLER - ISBA #1771
PAINE HAMBLIN LLP
701 Front Avenue, Suite 101
P.O. Box E
Coeur d'Alene, ID 83816-2530
Telephone: (208) 664-8115
Facsimile: (208) 664-6338

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:
2008 FEB 12 AM 10:03
CLERK DISTRICT COURT
Kathleen
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMS TECHNOLOGIES,

Defendant.

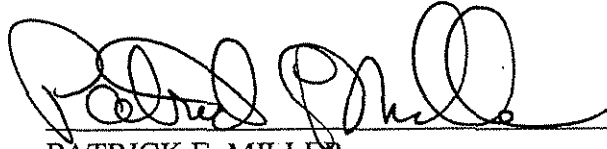
)
) Case No. CV-07-4062
)
) **DEFENDANT'S SUBMISSION OF**
) **MATERIALS IN SUPPORT OF**
) **MOTION FOR SUMMARY**
) **JUDGMENT**

COMES NOW, the Defendant, in support of its Memorandum of Points and Authorities in
Support of Defendant's Motion for Summary Judgment, and submit the following materials in
support thereof.

**DEFENDANT'S SUBMISSION OF MATERIALS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 1**

- (A) Sales Contract and Work Order (Spokane Structures, Inc.), dated March 16, 2007, Ex. 4 to Deposition of Linda Tomblin taken on November 7, 2007 [referred to within Defendant's Memorandum of Points and Authorities in Support of its Motion for Summary Judgment as Exhibit 4];
- (B) Design/Build Agreement dated 9/28/06 (Ex. 25 to Deposition of Linda Tomblin taken on November 7, 2007) [referred to within Defendant's Memorandum of Points and Authorities in Support of its Motion for Summary Judgment as Exhibit 25];
- (C) Excerpts from Deposition of Linda Tomblin taken on November 8, 2007 which include: p. 15, ll.8-21; p. 18, ll.2-16; p. 26, ll.5-12; p. 27, ll.7-25; p. 28, ll.1-5; p. 49, ll.10-12; p. 50, ll.5-7.

DATED this 12th day of February, 2008.



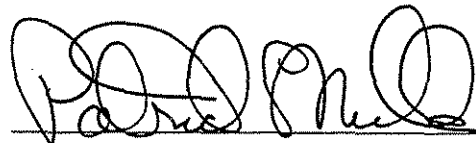
PATRICK E. MILLER
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of February 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Steven C. Wetzel
Kevin P. Holt
WETZEL & WETZEL, PLLC
1322 Kathleen Avenue, Suite 2
Coeur d'Alene, ID 83815-8339

- ☐ U.S. MAIL
☒ HAND DELIVERED
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☐ TELECOPY (FAX) to: 664-6741


Patrick E. Miller

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A

[Ex. 4 to Deposition of Linda Tomblin]

Serving the Inland Empire



510 N. Mullan Rd.
Spokane, WA 99206
Phone: 509-927-0655 • Toll Free 1-800-735-6347
Fax: 509-927-4062



SALES CONTRACT AND WORK ORDER

SPOKASI12606

I/we the owner(s) of the premises mentioned below hereby authorize you as contractor to furnish all necessary materials, labor, and workmanship, to install, construct and place the improvements according to the following and/or attached specifications, terms and conditions, on premises below described:

Owner's name Equitable Investment LLC. Home Phone _____ Work Phone (509) 762-6800
Job address N. Gait Way City Hayden State ID Zip 83835
Mailing Address 8826 N. Gait Way City Hayden State ID Zip 83835
Legal Description (If necessary) _____

Spokane Structures, Inc. will supply all labor and materials to build the office and warehouse space known as Systems Technologies, Inc in Hayden, Idaho. The plans and specifications for this contract are dated 3/16/07 and are signed by both parties. (Owner and Contractor) The construction budget is also a part of this contract. It not only details the costs for each line item, it also identifies the work that is to be done. Builders risk insurance is also included in the contract. No changes in the scope of work will be done without a written change order.

THIS SALES CONTRACT AND WORK ORDER IS SUBJECT TO MATERIAL AND LABOR LIEN. CANCELLATIONS WILL BE SUBJECT TO 18% CHARGE TO BE MADE AGAINST CASH PRICE.

THE BALANCE IS DUE AND PAYABLE UPON COMPLETION OF BUILDING. PLEASE GIVE FINAL CHECK TO THE BUILDER MADE OUT TO SPOKANE STRUCTURES, INC.

Cash Price	\$ <u>644,092.00</u>
Tax	\$ <u>included</u>
	\$ _____
Total	\$ <u>644,092.00</u>
Down payment or deposit	\$ <u>2,500.00</u>
Balance	\$ <u>641,592.00</u>
\$ _____	Due <u>monthly payments per plan</u>
\$ _____	Due _____
\$ _____	Due _____
\$ _____	Due _____

Make all checks payable to SPOKANE STRUCTURES, INC.

Owner agrees to sign all necessary papers required by any financial institution. All surplus material is the property of contractor. In the event of breach of this contract, the Property Owner(s) also agree to pay reasonable attorney's fees for consultation and/or such litigation, including all expenses, as may be necessary. No completion date under 45 days will be specified without written approval from the office. All jobs will be completed as soon as possible, but the company is not responsible for delays caused by bad weather, strikes, reasonable material shortages from suppliers, or acts of God. SPOKANE STRUCTURES, INC. will under no condition subtract any amount of money from purchase price.

SPOKANE STRUCTURES, INC.

16

DAY MARCH

20

Date 11/8/07

Exhibit # 4

Case Spokane Structures V. Equita

Depoent Tramlin L

Reporter KATHERINE S VANGRINSVEN

Naegeli Reporting Corporation

(800) 528-3335 FAX (503) 227-7123

By [Signature] X _____
Representative of Spokane Structures, Inc.

Accepted by _____ X _____
General Manager of Spokane Structures, Inc.

Owner/Buyer

COMPANY GUARANTEE: The Company guarantees its workmanship and will replace faulty material or faulty workmanship free of charge for _____ months

B

[Ex. 25 to Deposition of Linda Tomblin]

DESIGN/BUILD AGREEMENT

This agreement between SPOKANE STRUCTURES, INC. and Systemstechnologies sets forth the scope of the work to be performed by SPOKANE STRUCTURES, INC. in the design and construction of an office and warehouse of approximately 7950 sq. ft. located in Hayden, Idaho. Spokane Structures, Inc. agrees to design, engineer, and draft plans in preparation of all documents/drawings required to enable the owner and contractor to agree on a final design and cost of construction to be performed. As a minimum the drawings to be prepared should include:

1. Site and location plans to determine building location and elevation, set backs from property lines and utility locations.
2. Building foundations, slabs and sidewalks.
3. Building floor plans.
4. Schedules of doors, windows, finishes, etc.
5. Exterior building elevation to show style, form and finish.
6. Building sections to show sufficient detail required to achieve style and to show code compliance.
7. Electrical system layout.
8. Heating, air conditioning and ventilation to show all equipment and ducting.
9. Plumbing system layout including location of all special requirements, hose bibs, etc.

A final cost for construction will be provided upon completion of the plans and approval from the City of Hayden Building Department. The cost for construction is not to exceed \$605,000.00, which includes all costs associated with construction, including overhead and profit. Change orders will be handle in writing only, and billed at cost of change plus 20% for profit and overhead. Billing for construction will be monthly progress billing on the percentage of completion method. This agreement is contingent upon the owners getting financing. Should financing not be obtained Spokane Structures, Inc. will be paid \$5000.00 for the plans. A \$2,500.00 retainer is required at signing of this agreement.

By *[Signature]* 9/28/06
SPOKANE STRUCTURES, INC. DATE

By *[Signature]* Equitable Investment, LLC
OWNER DATE

By _____
OWNER DATE

Date 11/8/07 Exhibit # 25
Case Spokane Structures V. Equitable
Deponent Katherine S. VanGrinsven
Reporter KATHERINE S. VANGRINSVEN
Naegeli Reporting Corporation
(800) 528-3335 FAX (503) 227-7123

C

[Deposition excerpts - Linda Tomblin]

COPY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs.

Case No. CV-07-4062

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMSTECHNOLOGIES,

Defendant.



DEPOSITION OF LINDA TOMBLIN
Taken on behalf of the Plaintiff
November 8, 2007

- - -

BE IT REMEMBERED THAT, pursuant to the Idaho Rules of Civil Procedure, the deposition of LINDA TOMBLIN was taken before KATHERINE S. VANGRINSVEN, a Certified Shorthand Reporter, #757, on November 8, 2007, commencing at the hour of 9:35 a.m., the proceedings being reported at 1322 West Kathleen Avenue, Suite 2, Coeur d'Alene, Idaho.



RECEIVED

DEC 19 2007

PAINE HAMBLEN LLP

036

1 for us for a, for an addition to the building.

2 Q. Why did you hire Spokane Structures?

3 MR. MILLER: Object to the form.

4 THE WITNESS: The -- well, good question. I
5 guess it was the only name I was familiar with that did
6 commercial construction.

7 BY MR. WETZEL:

8 Q. In, in very general terms, give me an idea of
9 why it was that your, your company did not go forward with
10 the, with the construction that was anticipated by Spokane
11 Structures?

12 MR. MILLER: Object to the form.

13 THE WITNESS: Well, in general terms, it was
14 more money than we had anticipated. The, the original
15 quote that he gave us was for 550,000. The contract stated
16 right on there it would not exceed 605,000. In order to
17 even -- it, it -- the building didn't contain some of the
18 things that we wanted it to contain. And it didn't site on
19 the lot according to building codes to be able to provide
20 adequate parking so that it could get City approval.

21 BY MR. WETZEL:

22 Q. In front of you, there are some exhibits. I'd
23 like to start through those. You might want to undo the
24 clip right now because you're going to want to read through
25 them.

1 Structures?

2 A. Yes, I did.

3 Q. Okay. And so this was essentially the start of
4 the design process?

5 MR. MILLER: Object to form.

6 THE WITNESS: Yes.

7 BY MR. WETZEL:

8 Q. Okay. Let me have you turn to Exhibit No. 2.

9 Do you recognize this document? It seems to be
10 multi-paged again.

11 A. I do recognize the document. I'm just looking
12 to get some idea as to which one this was.

13 Q. Sure. There is a date on the right-hand side I
14 noticed, if that helps.

15 A. It does.

16 Q. Okay. So what is Exhibit 2?

17 A. Exhibit 2 was the plan that was submitted by
18 Spokane Structures along with a quote for 644,000.

19 Q. So was this the last submittal from Spokane
20 Structures?

21 A. I believe it was.

22 Q. Okay. And this was for 640 --

23 MR. MILLER: Object to form.

24 MR. WETZEL: You had just said the number. I
25 was just clarifying. I'm sorry.

1 you were making suggestions to the designer, correct?

2 A. Correct.

3 Q. Let me have you turn to Exhibit No. 4. And you
4 can put away those other two for the time being.

5 Do you recognize Exhibit 4?

6 A. I do.

7 Q. And what is that?

8 A. That was the construction contract that Rob
9 gave us along with the stripped-down plan that was number,
10 Exhibit No. 2.

11 Q. You characterized it as a "stripped-down plan"?

12 A. Correct.

13 Q. Okay. Why do you characterize it as stripped
14 down?

15 A. Because we took things out of the building.
16 That was after our meeting with the City, and so he was
17 trying to cut back on things that would cause it to, to
18 have increased parking requirements because the City
19 indicated it couldn't be built the way it was because of
20 building code parking restrictions.

21 Q. When you received Exhibit No. 4, what actions
22 did you take?

23 A. None that I specifically remember.

24 Q. Okay.

25 A. We didn't sign it.

1 Q. Did you call Rob at Spokane Structures about
2 the cost?

3 A. I could have. I don't recall.

4 Q. Okay. So you don't recall if you had any
5 discussions as to why the price was at 644,000?

6 A. Not specifically.

7 Q. Okay. When did you decide not to proceed?

8 A. When we found that we couldn't get the price
9 under what he'd originally quoted.

10 Q. So is that in relation to Exhibit No. 4?

11 A. I'm sorry, I don't get the -- I don't
12 understand your question.

13 Q. Okay. You said that you found out that you
14 were going to have to pay more for the building and so you
15 decided not to proceed, correct?

16 A. Well, we had a contract that specified that it
17 was going to be no more than 605,000. And we had financing
18 lined up for a specified amount, so we weren't going to go
19 over that budget.

20 Q. Now, that pricing was made based upon what
21 design? What did Spokane Structures have at that time?

22 A. That was based on Exhibit No. 2.

23 Q. And so when the price came in above 605, there
24 were no discussions as to why it was above that, the
25 original price?

1 A. I think we had some follow-up. It was either
2 discussions or possibly e-mails to do with ways of, of
3 getting a more attractive price. I believe he even
4 contacted some other subcontractors that we suggested to
5 see if he could possibly get the price down.

6 Q. Um-hum. Now, it's your position in this case,
7 however, that Spokane Structures should not be paid
8 anything for the work that they have done to date?

9 MR. MILLER: Object to the form.

10 THE WITNESS: We already did pay. We paid for
11 the full amount of the design contract that, that we'd
12 signed.

13 BY MR. WETZEL:

14 Q. You're talking the \$5,000?

15 A. Correct.

16 Q. Okay. Let me have you turn to Exhibit No. 5.

17 A. (Witness complies).

18 Q. Do you recognize that document?

19 A. Yes.

20 Q. And it appears to be a fax from
21 Systemstechnologies, correct?

22 A. Correct.

23 Q. Okay. And it was sent to Spokane Structures?

24 A. Um-hum.

25 Q. And it's from a "Linda"?

1 Q. Okay. Take a look at the very last exhibit,
2 No. 25.

3 A. I have it.

4 Q. Okay. At various times during this
5 deposition -- well, strike that.

6 What is Exhibit No. 25?

7 A. That is the design agreement that I signed with
8 Spokane Structures to design the building -- the, the
9 addition to the building at 11310 North Government Way.

10 Q. Okay. So this is the Design/Building Agreement
11 for the subject project?

12 A. I guess that's the correct terminology.

13 Q. Okay. Now, when you signed this document, had
14 you spoken to Pat Miller?

15 THE WITNESS: Again, am I --

16 MR. MILLER: He's only asking about dates.

17 THE WITNESS: Only dates.

18 MR. WETZEL: Not what.

19 MR. MILLER: He's only asking about dates.

20 THE WITNESS: Okay.

21 MR. WETZEL: Not what was said, just did you.

22 THE WITNESS: I did talk to him prior to the
23 time that I signed this agreement.

24 BY MR. WETZEL:

25 Q. Okay. And today in your testimony on several

1 occasions you have, have referred to an agreement that said
2 that there was a limitation on the cost of construction. I
3 believe it's not to exceed \$605,000, correct?

4 A. Correct.

5 Q. Okay. Is Exhibit No. 25 the contract that you
6 were referring to on all those occasions?

7 A. It is.

8 Q. Thank you. Back to Exhibit No. 7.

9 A. (Witness complies).

10 Q. So, now, August twenty -- 28th of 2006, you're
11 talking to your attorney about a particular agreement,
12 correct?

13 MR. MILLER: Read your --

14 MR. WETZEL: Yes or no.

15 THE WITNESS: I'm just making sure that's
16 something I can answer. I, I -- I'm --

17 MR. WETZEL: I'm not asking about what you
18 talked -- the discussion. I'm just asking did you talk to
19 your attorney.

20 THE WITNESS: Did I talk to my attorney when?

21 MR. MILLER: Well, Counsel, can I clarify. I
22 think you asked more specifically about the language of the
23 agreement. Can I just have a brief recess to clarify it.

24 MR. WETZEL: Sure.

25 MR. WETZEL: Okay. We're going to go off the

PATRICK E. MILLER - ISBA #1771
PAINE HAMBLIN LLP
701 E. Front Avenue, Suite 101
P.O. Box E
Coeur d'Alene, ID 83816-2530
Telephone: (208) 664-8115
Facsimile: (208) 664-6338

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:
2008 FEB 12 AM 10:03
CLERK DISTRICT COURT
Kathleen
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMS TECHNOLOGIES,

Defendant.

)
) Case No. CV-07-4062
)
) **DEFENDANT'S MOTION FOR**
) **SUMMARY JUDGMENT**
)
)
)
)
)
)
)
)

COMES NOW defendant Equitable Investment, L.L.C, a.k.a. Systems Technologies (hereinafter "Systems Technologies"), by and through its attorney, Patrick E. Miller, and hereby moves the Court, pursuant to I.R.C.P. § 56(c), to enter summary judgment in defendant's favor.

This Motion is based upon the records and files herein, affidavits, and concise statement of facts and memorandum in support hereof.

Defendant requests oral argument on this motion.

DATED this 12th day of February, 2008.



PATRICK E. MILLER
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of February, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Steven C. Wetzel
Kevin P. Holt
WETZEL & WETZEL, PLLC
1322 Kathleen Avenue, Suite 2
Coeur d'Alene, ID 83815-8339

- ☐ U.S. MAIL
- ☒ HAND DELIVERED
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- ☐ TELECOPY (FAX) to: 664-6741



Patrick E. Miller

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STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED:

file 2009 FEB 12 AM 10:03

CLERK DISTRICT COURT

Katharine
DEPUTY

PATRICK E. MILLER - ISBA #1771
PAINE HAMBLER LLP
701 Front Avenue, Suite 101
P.O. Box E
Coeur d'Alene, ID 83816-2530
Telephone: (208) 664-8115
Facsimile: (208) 664-6338

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMS TECHNOLOGIES,

Defendant.

)
) Case No. CV-07-4062
)
) **DEFENDANT'S MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT OF ITS MOTION FOR**
) **SUMMARY JUDGMENT**

COMES NOW, the defendant, Equitable Investment, LLC, pursuant to the rules of this
court, and submits this Memorandum of Points and Authorities in Support of this defendant's
Motion for Summary Judgment.

**DEFENDANT'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT - 1**

NATURE OF THE CASE

As described below, Equitable Investment, LLC, entered into an agreement with plaintiff, subject to contractual conditions, for the possible remodeling of its offices and manufacturing premises. Equitable Investment elected not to go forward with that transaction in that certain conditions were not met. From that, plaintiff brought suit asserting breach of contract, and with claims for equitable remedies of specific performance, unjust enrichment, implied in fact contract and promissory estoppel. Defendant has denied plaintiff's claims and by this motion seeks a dismissal of plaintiff's claims.

STATEMENT OF FACTS

Central to this motion, on or about September 28, 2006, plaintiff and defendant entered into a contract entitled "Design/Build Agreement". Deposition of Linda Tomblin, Exhibit 25 (hereafter referred to as Exhibit 25). Ultimately, Spokane Structures submitted to defendant a plan, together with a construction budget of \$644,092.00, which exceeded the cost of construction limitation, set forth in the contract. Deposition of Linda Tomblin, Exhibit 4 (hereafter referred to as Exhibit 4). Because the construction cost exceeded the contract limitation, the defendant Equitable Investment, LLC, elected not to proceed with the contract or the project proposed by Spokane Structures.

STANDARD OF REVIEW

Summary Judgment may properly be granted "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact

and that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c); *Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 718, 918 P.2d 583 (1996); *Lamb v. Manweiler*, 129 Idaho 269, 923 P.2d 976 (1996). The opposing party “may not rest upon the mere allegations or denials of that party’s pleadings, but the party’s response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” I.R.C.P.(e); *Smith*, supra. Further, the opposing party’s case may not rest on mere speculation because a mere scintilla of evidence is not enough to create a genuine issue of material fact. *Cameron v. Neal*, 130 Idaho 898, 950 P.2d 1237 (1997). A non-moving party’s failure to make a showing sufficient to establish the existence of an element essential to that party’s case, on which that party will bear the burden of proof at trial, requires the entry of summary judgment in favor of the moving party. *Jarman v. Hale*, 122 Idaho 952, 842 P.2d 288 (Ct.App.1992); *Smith*, supra.

UNDISPUTED FACTS

(1) On September 28, 2006, plaintiff Spokane Structures and defendant Equitable Investments, entered into an agreement. Exhibit A, to plaintiff’s Complaint, Exhibit 25 of the materials submitted by defendant in support of this motion.

(2) Plaintiff agreed to design, engineer and draft plans in preparation of all documents/drawings required to enable Equitable Investment and Spokane Structures to agree on a final design and cost of construction to be performed. Exhibit A, to plaintiff’s Complaint, Exhibit 25 of the materials submitted by defendant in support of this motion.

(3) The cost for construction was to include all costs associated with construction and was not to exceed \$605,000.00. Exhibit A, to plaintiff's Complaint, Exhibit 25 of the materials submitted by defendant in support of this motion.

(4) On March 16, 2007, plaintiff submitted plans to defendant with a projected construction cost of \$644,092.00. Exhibit 4 of the materials submitted by defendant in support of this motion.

(5) In that the cost of construction exceeded the contract limit, defendant elected not to proceed further. Deposition of Linda Tomblin, p. 15, ll.8-21; p. 18, ll.2-16; p. 26, ll.5-12; p. 27, ll.7-25; p. 28, ll.1-5; p. 49, ll.10-12; p. 50, ll.5-7

EQUITABLE INVESTMENT'S DECISION TO RELY UPON THE CONTRACT COST LIMITATION DOES NOT CONSTITUTE A BREACH OF CONTRACT

Central to this matter is the specific, unambiguous language of the September 28, 2006 agreement between plaintiff and defendant. The contract provided that plaintiff agreed to design, engineer and draft plans in preparation of all documents required to enable the owner and contractor "to agree on a final design and cost of construction to be performed."

In addition, the September 28, 2006 agreement between Spokane Structures, Inc. and Equitable Investment, LLC, specifically set forth a ceiling for construction costs. The contract specified:

A final cost for construction will be provided upon completion of the plans and approval from the City of Hayden Building Department. The cost for construction is not to exceed \$605,000,

which includes all costs associated with the construction, including overhead and profit.

On March 16, 2007, after multiple exchanges of plans, Spokane Structures submitted plans and a construction cost estimate of \$644,092.00 for the building. [Exhibit 4].

Thus there were two initial conditions. Those conditions were an agreement upon a final design and an agreement upon a construction cost. The contract further limited the construction cost by the provision that construction cost was not to exceed \$605,000.00.

Because the construction cost exceeded the cost limitation set forth in the September 28, 2006 agreement, Equitable Investment, LLC, elected not to proceed. (Deposition of Linda Tomblin, p. 15, ll.8-21; p. 18, ll.2-16; p. 26, ll.5-12; p. 27, ll.7-25; p. 28, ll.1-5; p. 49, ll.10-12; p. 50, ll.5-7

Reliance upon the terms of the contract does not constitute a breach. Equitable Investment was not required to accept a construction cost that would exceed the limitation as set forth in the September 28, 2006 contract. When the construction cost exceeded the contract maximum, Equitable Investment was entitled to withdraw.

The first issue to be resolved in determination of whether there is a breach of a contract, and any entitlement to remedies at law or equity, is a determination of the contract between the parties. *Sorensen v. St. Al's*, 141 Idaho 754, 118 P.3d 86 (S.Ct., 2005). The September 28, 2006 contract provided that Spokane Structures agreed to design, engineer and draft plans in

preparation of all documents required to enable the owner and contractor to agree on a final design and cost of construction to be performed. [Exhibit 25].

The contract then provided that the cost of construction must not exceed \$605,000.00.

If a contract is clear and unambiguous, the determination of the contract's meaning and legal effect are questions of law. *Rath v. Managed Health Network, Inc.*, 123 Idaho 30, 31, 844 P.2d 12, 13 (S.Ct., 1992). The meaning of the contract and the intent of the parties is determined from the plain meaning of the contract's own words. *Wood v. Simonson*, 108 Idaho 699, 702, 701 P.2d 319, 322 (Ct.App., 1985).

This contract specifically provides a ceiling of the construction cost. Where the proposal exceeded that cost, the defendant was not required to accept the results. The defendant was not required to go forward with the transaction, which was beyond that contemplated by the agreement.

The existence of the construction cost ceiling constituted a condition precedent. Where defendants relied upon the condition and elected not to proceed because of that condition, there is no default under the terms of the contract and no entitlement by plaintiff to either remedy in law or in equity. *Mecham v. Nelson*, 92 Idaho 783, 787, 451 P.2d 529, 533 (S.Ct., 1969) *in accord* *Medical Service Corporation v. Boise Lodge 310*, 126 Idaho 90, 878 P.2d 789 (Ct.App., 1994).

PLAINTIFF IS NOT ENTITLED TO EQUITABLE REMEDY

The plaintiff seeks specific performance with respect to the terms of the contract. As noted above, interpretation of the contract is according to the plain meaning of the terms of that

contract. This contract provided that Spokane Structures agreed to design, engineer and draft plans so that the parties could agree on a final plan and final cost of construction; provided, however, that the cost of construction could not exceed, under any circumstances, \$605,000.00. Where the proposed cost of construction exceeded \$605,000.00, Equitable Investment, LLC, was not required to go forward with the transaction. An unambiguous contract is given its plain meaning according to the terms of the contract. *Iron Eagle Development v. Quality Design System*, 138 Idaho 487, 65 P.3d 509 (S.Ct., 2003).

When parties enter into an express contract, a claim based in equity is not allowed because the express contract precludes enforcement of equitable claims. *Iron Eagle Development v. Quality Design System, supra*.

Plaintiff seeks equitable remedy attempting to preclude specific contract terms. The contract is unambiguous. The contract specifically provided a cost limitation, upon which defendant was entitled to rely.

PLAINTIFF IS NOT ENTITLED TO RELIEF UNDER PROMISSORY ESTOPPEL

As noted above, the terms of the contract are specific. Plaintiff asserts that it is entitled to relief under the theory of promissory estoppel. The doctrine of promissory estoppel is intended as a substitute for consideration and not as a substitute from agreement between the parties. *Smith v. Boise Kenworth Sales, Inc.*, 102 Idaho 63, 652 P.2d 417 (S.Ct., 1981).

The doctrine of promissory estoppel does not preclude defendant from relying upon an express contract term. Defendant was entitled to rely upon the construction cost limit. The

defendant's reliance upon that term does not constitute a breach and does not permit equitable relief as sought by plaintiff.

THE PLAINTIFF IS NOT ENTITLED TO RELIEF UNDER THE DOCTRINE OF AN IMPLIED CONTRACT WHERE THERE IS AN EXPRESS CONTRACT BETWEEN THE PARTIES

The contract in question provided that plaintiff would prepare plans so that plaintiff and defendant could agree upon a final design and upon a construction cost; provided that the cost did not exceed \$605,000.00.

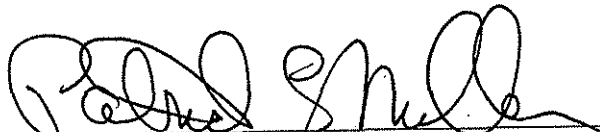
The contract does not require defendant to use the plans if it did not constitute a final design that could, or would be constructed for not more than \$605,000.00.

Where an express contract exists on the same subject matter, an implied contract is precluded from enforcement. *In re Estate of Boyd*, 134 Idaho 669, 8 P.3d 664, *rehearing denied and review denied* (Ct.App., 2000); *Blaser v. Cameron*, 121 Idaho 1012, 829 P.2d 1361 (Ct.App., 1991).

CONCLUSION

The parties entered into a contract with a specific pre-condition. That pre-condition called for agreed upon plans for a building with a construction cost of \$605,000.00. The plaintiff submitted plans. The plans as submitted would require a construction cost in excess of the contract limit. The defendant was not required to waive a construction limit. It was entitled to rely upon the contract and decide not to proceed with plaintiff.

DATED this 12th day of February, 2008.



PATRICK E. MILLER
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of February, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Steven C. Wetzel
Kevin P. Holt
WETZEL & WETZEL, PLLC
1322 Kathleen Avenue, Suite 2
Coeur d'Alene, ID 83815-8339

- ☐ U.S. MAIL
☒ HAND DELIVERED
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX) to: 664-6741


Patrick E. Miller

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DEFENDANT'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT - 9

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
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CLERK DISTRICT COURT
DEPUTY
[Signature]

Steven C. Wetzel, ISB #2988
 Kevin P. Holt, ISB #7196
 WETZEL, WETZEL, BREDESON & HOLT, PLLC
 1322 Kathleen Ave., Suite 2
 Coeur d'Alene, Idaho 83815-8339
 Telephone: (208) 667-3400
 Facsimile: (208) 664-6741

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
 Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
 Idaho Limited Liability Company, a.k.a.
 SYSTEMSTECHNOLOGIES,

Defendant.

Case No. CV-07-4062

AFFIDAVIT OF KEVIN P. HOLT IN
 SUPPORT OF PLAINTIFF'S MOTION FOR
 EXTENSION OF TIME TO RESPOND TO
 DEFENDANT'S MOTION FOR SUMMARY
 JUDGMENT

STATE OF IDAHO)
) ss.
 County of Kootenai)

I, Kevin P. Holt, after first being duly sworn, depose and say:

1. I am one of the attorneys for Spokane Structures, Inc., the plaintiff in the present case, and make this Affidavit based upon my personal knowledge.

2. Steven C. Wetzel, lead counsel for Spokane Structures, Inc., is currently out of the country and is telecommuting from a satellite office in Mexico. Due to difficulties with internet providers, Steven C. Wetzel has been unable to communicate and/or prepare the necessary pleadings to respond to Defendant's Motion for Summary Judgment.

3. Rob Lewis, President of Spokane Structures, Inc., has been out of town, and our office has been unable to communicate with him via telephone, therefore an additional two days is necessary to respond to Defendant's Motion for Summary Judgment.

4. Further, in the interest of fairness, Defendant should be afforded a similar 2-day extension within which to reply to Plaintiff's response.


Kevin P. Holt, Affiant

Subscribed and sworn to before me this 26th day of February, 2008.



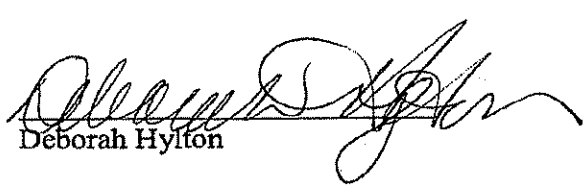

Notary for the State of Idaho

Commission Expires: 10-16-2012

CERTIFICATE OF DELIVERY

I hereby certify that on the 26th day of February, 2008, I served the foregoing document upon:

<input type="checkbox"/> U.S. Mail, Postage Prepaid	PATRICK E. MILER
<input type="checkbox"/> Hand Delivered	AMY C. BISTINE
<input type="checkbox"/> Overnight Mail	PAINE HAMBLIN LLP
<input checked="" type="checkbox"/> Facsimile: 664-6338	701 E Front Avenue, Suite 101
	P.O. Box E
	Coeur d'Alene, ID 83816-2530
	<i>Attorneys for Defendant</i>


Deborah Hylton

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holt.doc

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
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CLERK DISTRICT COURT
DEPUTY
Christina

Steven C. Wetzel, ISB #2988
Kevin P. Holt, ISB #7196
WETZEL, WETZEL, BREDESON & HOLT, PLLC
1322 Kathleen Ave., Suite 2
Coeur d'Alene, Idaho 83815-8339
Telephone: (208) 667-3400
Facsimile: (208) 664-6741

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMSTECHNOLOGIES,

Defendant.

Case No. CV-07-4062

PLAINTIFF'S MOTION FOR EXTENSION
OF TIME TO RESPOND TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

COMES NOW the Plaintiff, by and through its counsel of record, WETZEL, WETZEL,
BREDESON & HOLT, P.L.L.C., and hereby moves the Court for an Order enlarging time
pursuant to Rule 6(b) I.R.C.P., granting SPOKANE STRUCTURES, INC., a Washington
corporation, additional time to respond to Defendant's Motion for Summary Judgment.

PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO RESPOND TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 1

On February 12, 2008, Defendant filed its Motion for Summary Judgment. Plaintiff's response is due on or before February 27, 2008, and Defendant's reply is due on or before March 5, 2008.

Due to the circumstances detailed in the Affidavit of Kevin P. Holt filed herewith, Plaintiff respectfully requests that an order be entered granting an additional two days extension for Plaintiff to respond to and including February 29, 2008, and an additional two days extension for Defendant to reply to and including March 7, 2008, and to shorten the time required for notice of hearing.

Oral argument is requested.

DATED this 26th day of February, 2008.

WETZEL, WETZEL, BREDESON &
HOLT, P.L.L.C.

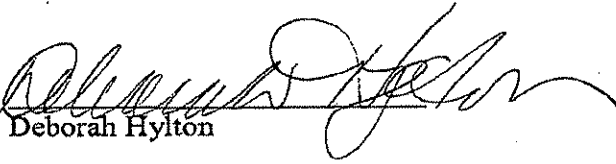
By 

Kevin P. Holt
Attorneys for Plaintiff

CERTIFICATE OF DELIVERY

I hereby certify that on the 26 day of February, 2008, I served the foregoing document upon:

<input type="checkbox"/> U.S. Mail, Postage Prepaid	PATRICK E. MILER
<input type="checkbox"/> Hand Delivered	AMY C. BISTINE
<input type="checkbox"/> Overnight Mail	PAIEN HAMBLER LLP
<input checked="" type="checkbox"/> Facsimile: 664-6338	701 E Front Avenue, Suite 101
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	<i>Attorneys for Defendant</i>


Deborah Hylton

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PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO RESPOND TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 3

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
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CLERK DISTRICT COURT

DEPUTY

Steven C. Wetzel, ISB #2988
Kevin P. Holt, ISB #7196
WETZEL, WETZEL BREDESON & HOLT, PLLC
1322 Kathleen Ave., Suite 2
Coeur d'Alene, Idaho 83815-8339
Telephone: (208) 667-3400
Facsimile: (208) 664-6741

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMSTECHNOLOGIES,

Defendant.

Case No. CV-07-4062

MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

COMES NOW the Plaintiff, by and through counsel of record, WETZEL, WETZEL,
BREDESON & HOLT, P.L.L.C., and hereby submits this Memorandum in Opposition to
Defendant's Motion for Summary Judgment. This Memorandum is supported by the Affidavits
of Kevin P. Holt and Rob Lewis, filed contemporaneously herewith, along with the pleadings,
depositions and admissions previously filed, taken or made in this matter.

INTRODUCTION

"Keep it simple, but no simpler." – Albert Einstein

Defendant presumes for the sake of its motion for summary judgment that the contract in question was, indeed, a complete and fully enforceable contract. And, further, that there was a condition precedent that was not met by Plaintiff when Plaintiff submitted a bid in excess of the \$605,000.00. This is not only an inaccurate characterization of the facts; it is an oversimplification of them. The facts in this case will show that Plaintiff was (and is) fully prepared to complete the project in question for an amount under \$605,000.00. Period. This single dispute of the material facts, alone, serves to defeat Defendants motion for summary judgment. But lest we violate Professor Einstein's admonition, we should proceed a bit further.

The facts will show that, per the Design/Build Agreement, the \$605,000.00 term did not represent an absolute ceiling on the cost of the project, nor did it represent a condition precedent, as that term is used in the law, or as suggested by Defendant. Directly following the \$605,000.00 provision, the agreement states that change orders need to be in writing. If the document contemplates change orders, it obviously contemplates possible increases in the final cost, beyond the \$605,000.00. Furthermore, the testimony of the Defendant's Banker Mr. Kleng of Mountain West, certainly indicates that higher numbers were being discussed for loan purposes:

A. that's how we got that 642. So that was basically based on our evaluation the maximum loan amount,

Q. And the liability again is \$620,000, correct?

A. Yes."

See Holt Affidavit, excerpts from deposition transcript of Bart Kleng, respectively page 30 line 25 through page 31 line 1 and page 42 lines 3-5.

The only absolute condition in the Design/Build Agreement was the one identified as such in the document, where it states that the agreement is contingent upon the owners getting financing. Defendant, through Linda Tomblin, has also claimed that it only owes Plaintiff \$5,000.00,

A. We paid the sum that we were obligated to pay, which was the \$5,000 that was the contractual agreement, the way I see it.

See Holt Affidavit, excerpts from deposition transcript Linda Tomblin, page 98 lines 20 – 22.

This assertion is disputed as well, since the payment of \$5,000.00 was to be the only obligation of Defendants if no financing was obtained. The facts show that financing was available. See Holt Affidavit, excerpts from deposition transcript of Bart Kleng. It is beyond question that the loan was approved and was being processed; the title policy for the security had been ordered from North Idaho Title. See Holt Affidavit, excerpts from deposition transcript of Bart Kleng page 41 lines 24-25 through page 42 lines 1-13.

The only issue is the exact amount of the available loan proceeds which appears to be a contested material fact.

Thus, provided that the Design/Build Agreement is a fully enforceable contract, then the financing contingency does not apply and Defendants are in breach; a breach for which Plaintiff is entitled to compensation. If there is not a fully enforceable contract, then Plaintiff is entitled to its equitable claims as set forth in the complaint. In either event, there remain numerous disputes of material facts in this case which must be resolved at trial.

UNDISPUTED/DISPUTED MATERIAL FACTS

Plaintiff responds to Defendants' specious listing of "Undisputed Facts" as follows:

1. Defendant's "Undisputed Fact" number (1) states that the parties entered into an agreement. Plaintiff agrees that document was executed by the parties, but whether or not that agreement constitutes a legally binding and enforceable contract, as to every term, remains to be determined by the court. If the contract is legally binding, then the Plaintiff would contend that Defendant breached the agreement. Obviously, Defendant would contest that, the most material of facts.

2. Defendant's "Undisputed Fact" number (2) states that Plaintiff agreed to engineer and draft plans. Again, provided there was a contract between the parties, then Plaintiff was obligated to design, engineer and draft plans. Plaintiff did in fact design, engineer and draft plans in reliance on the agreement or the promise of Defendant to pay for such costs. Yet it even appears that the reasonableness of the charges is contested. Linda Tomblin, in her deposition, in reviewing the invoice sent to her from the Plaintiff states that the professional fees paid on behalf of the Defendant "seemed high". See Holt Affidavit, excerpts from deposition transcript Linda Tomblin, page 97 lines 14- 24 through page 98 lines 1-4. Not only is the Defendant's "Undisputed fact" number 2 contested, the material facts that flow from the original fact are also contested.

3. Defendant's "Undisputed Fact" number (3) states that the cost of construction was not to exceed \$605,000.00. This "Undisputed Fact" is flatly disputed by Plaintiff. See affidavit of Rob Lewis at paragraph 9. The \$605,000.00 limit was to be controlling provided that there was no later change order which would increase that limit. Plaintiff was, and remains prepared to build the subject project for less than \$605,000.00. See affidavit of Rob Lewis at paragraph 14. Thus, even if the \$605,000.00 limit is interpreted to be a condition precedent, it

was never treated as such by the actions of Linda Tomblin or Rob Lewis. See affidavit of Rob Lewis.

4. Defendant's "Undisputed Fact" number (4) states that Plaintiff submitted plans with a stated cost of \$644,092.00. Plaintiff, being fully cognizant of the \$605,000.00 limitation, submitted the March 16, 2007 plans in the form of a response to a proposed change order by Defendants. Thus, the plans were not a final, take-it-or-leave-it, proposal. See affidavit of Rob Lewis at paragraph 11.

5. Defendant's "Undisputed Fact" number (5) states that because the cost of construction exceeded the magic \$605,000.00 figure, that this constituted a "poof" clause whereby the contract could be abandoned with impunity. This "Undisputed Fact" is adamantly disputed by Plaintiff. See Affidavit of Rob Lewis, filed herein. Nowhere in the subject document does it state that a bid or estimate by Plaintiff in excess of the \$605,000.00 would trigger a provision allowing Defendants to cancel the contract notwithstanding all of the out-of-pocket costs incurred by Plaintiff. See Exhibits to Lewis affidavit and Exhibit B to Defendant's Submission of Materials in Support of Motion for Summary Judgment (exhibit 25 of the Linda Tomblin Deposition). Such would be, inter alia, inequitable. We should "keep it simple, but no simpler."

STANDARD OF REVIEW

Summary judgment is proper when "the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). "If there is no genuine issue of material fact, only a question of law remains . . ." *Tower Asset Sub Inc. v. Lawrence*, 2007 WL 195990, at 2 (Idaho 2007) (citations omitted). "In determining whether the

record presents an issue of material fact, all allegations of fact in the record, and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion.” *Moreland v. Adams*, 2007 WL 189336, at 1 (Idaho 2007) (citations omitted).

ARGUMENT

1. SUMMARY JUDGMENT IN DEFENDANT’S FAVOR IS NOT APPROPRIATE BECAUSE THERE ARE ISSUES OF MATERIAL FACT IN DISPUTE BETWEEN THE PARTIES

Defendant, in its Memorandum of Points and Authorities, first claims that its repudiation of the contract was not a breach. This material statement is flatly disputed by Plaintiff. Defendant’s claim that it was justified in repudiating the contract hangs on the proposition that any proposed bid by plaintiff in excess of the \$605,000.00 triggered the alleged “condition,” thus releasing Defendant from all further obligations. This material proposition is resoundingly disputed by Plaintiff. At no point during the ongoing preparation of plans did the Plaintiff inform Defendants that it could not construct the project for less than \$605,000.00. Further, at no time during the preparation of final plans did the Defendants inform Plaintiff that they would repudiate the contract if plans were presented which exceeded the \$605,000.00 limit. See Affidavit of Rob Lewis, filed herein.

As stated above, the \$605,000.00 “ceiling” condition, as characterized by Defendants, is inapposite when considering the agreement as a whole. The figure must be taken as a guide rather than a deal-breaking limitation. Otherwise, the change order language that immediately follows would be extraneous.

Defendant cites cases that define what a contract is and how a contract is to be interpreted. And, in short, Defendant claims that the clear, unambiguous and plain meaning of the contract provides that: “Where the proposal exceeded that cost, the defendant was not

required to accept the results.” See Defendant’s Memorandum of Points and Authorities in support of its motion for summary judgment, at page 6. Nowhere in the Design/Build Agreement does it state that a bid in excess of \$605,000.00 by plaintiff would automatically imbue Defendant with a cancellation right, absolving it of all contractual obligations. Any such assertion is not only a gross oversimplification, but is just plain false.

Defendants’ Memorandum and Points of Authority, at page 8, states:

The contract in question provided that plaintiff would prepare plans so that plaintiff and defendant could agree upon a final design and upon a construction cost; provided that the cost did not exceed \$605,000.00.

This is not what the “contract” says. But even if it did, the “contract” goes on to state:

Change orders will be handle(sic) in writing only, and billed at cost of change plus 20% for profit and overhead.

Defendant asks for its cake and for leave to eat it. Plaintiff did not present a bid to Defendants and then declare it was a final offer, thus implicating the \$605,000.00 limitation clause. Rather, Defendants requested certain upgrades and additions, and Plaintiffs did their best to accommodate them by proposing alternative plans and specifications. See affidavit of Rob Lewis at paragraph 9. Plaintiff should not be penalized for its spirit of cooperation and zealous endeavor to comply with the actual terms of the agreement.

The contract language, as interpreted by Defendant, is as clear as mud. The mechanism by which any so-called monetary limit condition would be invoked is simply not defined anywhere in the document. Therefore, Defendant’s action in repudiating the contract was pursuant to the whim of Defendant and not pursuant to any contractual provision.

The Defendant would have the Court interpret the \$605,000.00 limit as a clear and

unambiguous mechanism, providing a get-out-of-contract-free card to Defendant. This is simply not the case. A term is ambiguous if it is "reasonably subject to conflicting interpretations." *Dr. James Cool, D.D.S. v. Mountainview Landowners Co-op, Ass'n, Inc.*, 129 Idaho 770, 773, 86 P.3d 484, 487 (2004), citing *Mut. Of Enumbclaw Life Ins. Co. v. Lincoln*, 130 Idaho 72, 74, 936 P.2d 1314, 1316 (1997). When the \$605,000.00 limitation clause is read together with the change order clause of the Design/Build Agreement, the document must be, at the very least, reasonably subject to conflicting interpretations. And, because the parties dispute the material facts concerning the meaning and interpretation of their agreement, summary judgment is not appropriate.

2. SUMMARY JUDGMENT CANNOT BE GRANTED IN DEFENDANT'S FAVOR BECAUSE PLAINTIFF'S COMPLAINT INCLUDES EQUITABLE CLAIMS LYING OUTSIDE THE EXPRESS CONTRACT BETWEEN THE PARTIES

Defendant then asserts that because the parties' agreement was covered by a clear and unambiguous contract, that Plaintiff is not entitled to any equitable claims. Again, Defendant is jumping the gun. There is no clear, unambiguous agreement as to all the terms of the alleged contract. Defendant states, in its Memorandum of Points and Authorities, incorrectly, that "the cost of construction could not exceed, under any circumstances, \$605,000.00." (emphasis added) But then the agreement references change orders and the costs of same. So the document did contemplate the price exceeding \$605,000.00. Further Linda Tomblin freely admits that the original plan was not what she desired and that she participated in the changes of the design, as she did not want a "hunkie warehouse". See Holt Affidavit, excerpts from deposition transcript Linda Tomblin, page 29 lines 7-14.

Ms. Tomblin also freely admits her suggestion or her involvement and approval of costly additions such as adding a cantilever. See Holt Affidavit, excerpts from deposition transcript Linda Tomblin, page 31 lines 4-7; and a "belly band around the entire building to break up the 'upper' and 'lower' colors on the horizontal Hardiboard." See Holt Affidavit, excerpts from deposition transcript Linda Tomblin, Page 34 lines 8-10.

Defendant further cites authority that when parties enter an express contract, a claim based in equity is not allowed. Again, this presupposes an unambiguous enforceable contract has been executed. Plaintiff does not concede this. The law is clear on this issue.

The purpose of interpreting a contract is to determine the intent of the contracting parties at the time the contract was entered. In determining the intent of the parties, this Court must view the contract as a whole. If a contract is found ambiguous, its interpretation is a question of fact. Whether a contract is ambiguous is a question of law. A contract is ambiguous if it is reasonably subject to conflicting interpretations. (emphasis added)

Bakker v. Thunder Spring-Wareham, LLC, 141 Idaho 185, 190 108 P.3d 332, 337 (2005), citing *Lamprecht v. Jordan, LLC*, 139 Idaho 182 185-86, 75 P.3d 743, 746-47 (2003)

The Defendant would have the court interpret the contract as possessing an absolute monetary limit and that by suggesting an amount in excess of that limit, the Plaintiff has provided the Defendant the opportunity to repudiate the contract. Plaintiff asserts that the \$605,000.00 monetary limit was a guide from which additional costs could be added through affirmation of the parties via the change order provision. Clearly, the contract is reasonably subject to conflicting interpretations.

Adding to the contest on this issue is the fact that the added language which is at issue appears to be added by the Defendant on advice of counsel. See affidavit of Rob Lewis. Linda Tomblin freely admits that the original draft of the agreement presented by Spokane Structures used the phrase "is expected to be" and she requested the substitution of the phrase "not to

exceed." See Holt Affidavit, excerpts from deposition transcript Linda Tomblin, Page 58 lines 4-8. The language is inconsistent with the rest of the wording of the agreement and under the rules of construction of an ambiguous contract the interpretation should be against the drafter, the Defendant.

Adding further to the ambiguity is the fact that the subject agreement uses the appellation, Systemtechnologies throughout the document, then Ms. Tomblin signs the document as "Member Manager" of Equitable Investments, L.L.C. See Exhibit "B" to Lewis affidavit and Exhibit B to Defendant's Submission of Materials in Support of Motion for Summary Judgment (exhibit 25 of the Linda Tomblin Deposition). The trier of fact must also consider this ambiguity and/or whether this mistake was something more clandestine. That is, if the first attempt to get out of the contract failed, the Defendant adds another. This would be a determination to be made by the trier of fact.

Lastly, Defendant's assertion that the \$605,000.00 provision is a condition precedent does not protect it against claims for costs incurred by Plaintiff prior to the proposal in excess of the monetary limit. Plaintiff incurred significant costs associated with implementation of the Design/Build Agreement. See affidavit of Rob Lewis at paragraph 16. These costs were incurred prior to Defendant's refutation of the agreement. As Plaintiff has always agreed to construct the project for less than \$605,000.00, the Defendant should be obligated to reimburse Plaintiff for those costs. If it is determined that the Design/Build Agreement is not a binding contract, then Plaintiff is entitled to pursue its equitable claims for promissory estoppel and/or implied contract.

CONCLUSION

For the reasons discussed above, Defendant's Motion for Summary Judgment should be DENIED.

DATED this ⁸¹27 day of February, 2008.

WETZEL, WETZEL, BREDESON & HOLT,
P.L.L.C.


By 

Steven C. Wetzel
Attorneys for Plaintiff

CERTIFICATE OF DELIVERY

I hereby certify that on the 27 day of February 2008, I served the foregoing document upon:

<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 664-6338	PATRICK E. MILER AMY C. BISTINE PAIEN HAMBLÉN LLP 701 E Front Avenue, Suite 101 P.O. Box E Coeur d'Alene, ID 83816-2530 <i>Attorneys for Defendant</i>
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Deborah Hylton

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STATE OF IDAHO
COUNTY OF KOOTENAI } ss.
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CLERK DISTRICT COURT

DEPUTY

Steven C. Wetzel, ISB #2988
Kevin P. Holt, ISB #7196
WETZEL, WETZEL, BREDESON & HOLT, PLLC
1322 Kathleen Ave., Suite 2
Coeur d'Alene, Idaho 83815-8339
Telephone: (208) 667-3400
Facsimile: (208) 664-6741

Attorneys for Plaintiff

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Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMSTECHNOLOGIES,

Defendant.

Case No. CV-07-4062

AFFIDAVIT OF ROB LEWIS IN SUPPORT
OF PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

STATE OF IDAHO)
) ss.
County of Kootenai)

I, Rob Lewis, after first being duly sworn, depose and say:

1. I am the president and owner of Spokane Structures, Inc., the plaintiff in the present case, and make this Affidavit based upon my personal knowledge.

2. I represented Spokane Structures, Inc. in negotiations with Linda Tomblin.

AFFIDAVIT OF ROB LEWIS IN SUPPORT OF PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - Page 1

072

3. Linda Tomlin represented herself to be a co-owner and authorized agent of Equitable Investments L.L.C., the owner of the building which is the subject of this law suit.

4. Linda Tomlin represented herself to be a co-owner and authorized agent of Systems Technology, the tenant of the building, which is the subject of this law suit.

5. The subject building is an older commercial/industrial building of simple and inexpensive construction. Linda Tomblin once described the building to me as a "meat house." That it had once contained a butcher shop. The project, as planned, would have consisted of essentially an entirely new building being attached to the existing structure.

6. Sometime prior to September 28, 2006, Linda Tomlin contacted Spokane Structures, Inc. regarding a remodel of the subject property. Linda Tomlin represented that her company, the tenant of the building, had grown to the point that the structure needed to be upgraded to reflect the business' success and the business' needs. Ms. Tomlin described the proposed remodel as essentially erecting a new building and connecting it to the existing structure. Linda Tomlin presented Spokane Structures, Inc. with a prospective plan drafted by a Dave Lansford, residential designer. A true and accurate, but reduced copy of that design is attached as Exhibit "A" to this Affidavit.

7. Based upon the anticipated remodel illustrated in Exhibit "A," Spokane Structures, Inc. prepared the design build agreement attached hereto as Exhibit "B." This agreement was consistent with Linda Tomblin's desires, as she represented those desires to me. The design build agreement is a standard agreement which my company uses in order to allow construction to proceed rapidly and less expensively than completing all of the specifications and details of construction prior to commencement of the construction. Design build agreements have become a standard method in commercial construction because of the savings of time and

money to the contractor and the owner. Linda Tomlin advised me that she was interested in using a design build agreement because of the advantages in expediting the project.

8. The original Design/Build Agreement did not contain the phrase "not to exceed \$605,000." The original phrase that was deleted was more general, consistent with the intent of the flexibility of the design-build concept. Linda Tomblin represented that the phrase added by the attorney only related to the design as existed on that date, so I had no concern with the substitution of the language since Spokane Structures, Inc. could complete the remodel of the building as illustrated in Exhibit A, for \$605,000.

9. In the subsequent discussions with Linda Tomlin, it became obvious that Linda did not want to construct the remodel that was illustrated by Dave Lansford, see Exhibit "A." In particular, she wanted to change the size and the aesthetics of the building. Based on her requests, I prepared two plans and completed cost estimates for the plans which included the paying for an architect, engineer and substantial work of contacting subcontractors and material suppliers and completing specifications. Although the changes requested by Linda Tomlin were very numerous, the following are good examples of the kinds of changes requested:

9.1 Increase the size of the finished square footage of the building by 5000 square feet. At a cost of \$15.00 per square foot this equates to a \$75,000.00 price tag.

9.2 Increase the number of windows from 18 to 28 at a cost of \$2,500.00.

9.3 Increased the size of the parking lot by 2054 square feet at a cost of \$35,945.00.

9.4 Add a pop out on the front office and change the timber frame entry from the original entry at a cost of \$4,000.00.

9.5 Add a "clean room" at a cost of \$15,000.00.

10. I advised Linda that each of the changes would increase the cost of the building, but she wanted the changes anyway.

11. I sent the third draft of the plan, Exhibit "D," and I personally spent a great deal of time amending the plans. We went through two complete plans. True and accurate, but reduced, copies of those designs are attached as Exhibit "C" and "D" to this affidavit. The new redesigned building had a cost of \$644,092.00. The work order (exhibit 4 of Linda Tomblin deposition) is further evidence of her requested changes and the related costs in accordance with the spirit and wording of the design build agreement. This was just one more step in a continuing design/build process. If Linda Tomblin desired to proceed with the more expensive design as she desired in the design meetings, then the cost of the construction would obviously be increased consistent with the change from the original design. The \$644,092.00 design was never "a take it or leave it" situation, Spokane Structures could easily back off of that number if Linda Tomblin desired.

12. As an example of the ongoing negotiations and communications after the presentation of the \$605,000.00 bid, please note the following communications:

12.1. Attached as Exhibit "E" is a true and correct copy of an email dated January 22, 2007, in which Linda Tomblin acknowledged additions to the overall project.

12.2. Attached as Exhibit "F" is a true and correct copy of a fax dated February 22, 2007, in which Linda Tomblin acknowledged that "We're ready to rock and roll!" This was after the bid in excess of \$605,000.00 was presented and discussed.

12.3. Attached as Exhibit "G" is a true and correct copy of an email from me to Ms. Tomblin, dated March 30, 2007, reflecting communications and concerns she had about increasing costs.

12.4. Attached as Exhibit "H" is a true and correct copy of Ms. Tomblin's response to Exhibit "G" dated March 30, 2007, which clearly acknowledges my comments and discusses additional contractors, and makes no mention of the higher bid having jeopardized the agreement.

12.5. Attached as Exhibit "I" is a true and correct copy of an email from Ms. Tomblin, to me, dated April 5, 2007, which informs me that the loan papers had not yet been signed because she was waiting for final bids from subcontractors. No mention is made of the \$605,000.00 limitation.

12.6. Attached as Exhibit "J" is a true and correct copy of an email from Ms. Tomblin to me, dated April 10, 2007, which confirms the ongoing negotiations and mutual agreement as to progress on the project. The email also acknowledges the need to present a final price, based on the final plans.

12.7. Attached as Exhibit "K" and Exhibit "L" are true and correct copies of my emails, dated April 10, 2007, and April 15, 2007, , in which I continue to update Ms. Tomblin as to the progress of the project.

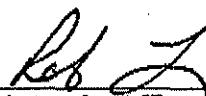
12.8. Attached as Exhibit "M" is a true and correct copy of my email to Ms. Tomblin in response to receiving a letter from her attorney.

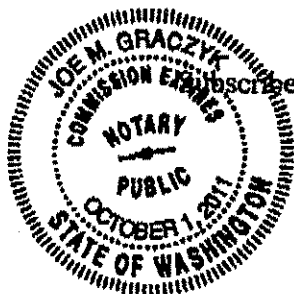
13. Linda Tomblin then failed to communicate further with me. At that point I sent her invoices for the sums that I owed to subcontractors for the work completed to that date and she failed to pay those invoices. Then I received a check for \$2500 which along with the \$2500 paid as down payment made a total of \$5,000 for which she claimed were the only sums owed. Even though the contract clearly states the limit of \$5,000 was only in the event of a failure to obtain financing.

14. As of this day and since the initial signing of the design-build agreement, Exhibit "B," Spokane Structures, Inc. could still construct the remodel shown on the Lansford illustration, Exhibit "A" for \$605,000 or less. At no time during the design meetings did I represent that the remodel could not be completed for \$605,000 or less. At no time did Linda Tomblin or Bruce Tomblin indicate that the contract would be cancelled if plans were presented which exceeded the \$605,000.00. In fact, Linda Tomblin's representations indicated her desire to exceed the \$605,000.00. Linda Tomblin also represented that the bank loan for financing of the project, could exceed \$605,000.00.

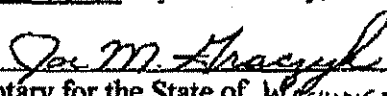
15. As further evidence of the requirement for flexibility in these types of transactions, it is important to note that art of the process includes obtaining a building permit. This usually involves a preconstruction meeting. This meeting often leads to further amendments to the plans and often increases costs as the city building staff often request additions or amendments to the plans based upon their interpretation of the building or other city codes. That did occur on the subject project and we could meet the concerns of the city and still build the building, however we did not complete the task due to the Defendant's refusal to communicate further.

16. The substantial expenses of Spokane Structures, Inc. remain unpaid and Linda Tomblin's companies have received design consultations and plans that will be used in the future and are financially valuable to those companies.


Rob Lewis, Affiant



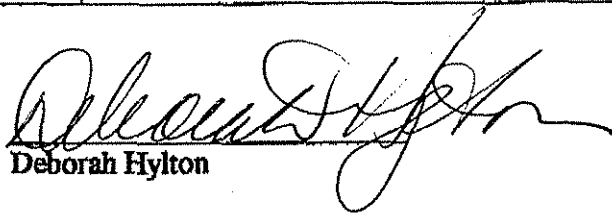
Subscribed and sworn to before me this 27th day of February, 2008.


Notary for the State of WASHINGTON
Commission Expires: 10/1/11

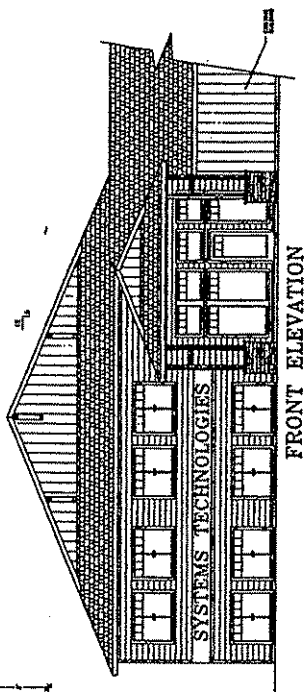
CERTIFICATE OF DELIVERY

I hereby certify that on the 27 day of February, 2008, I served the foregoing document upon:

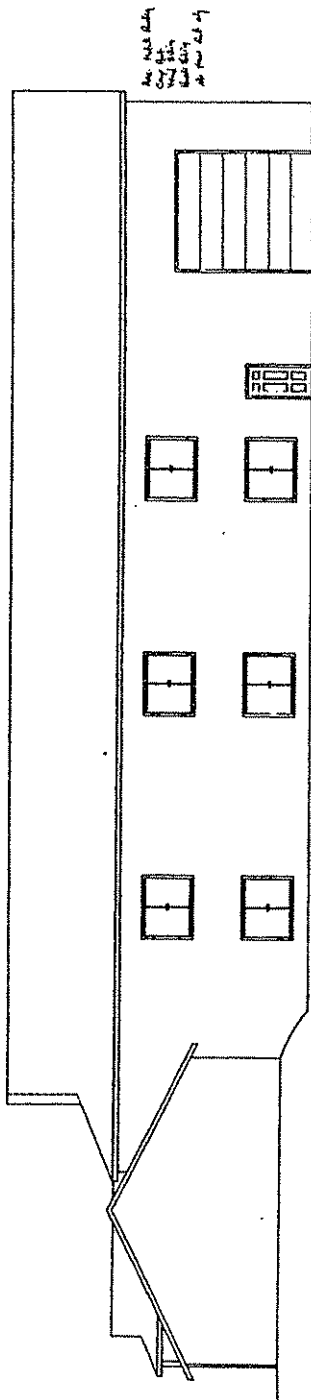
<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 664-6338	PATRICK E. MILER AMY C. BISTINE PAINE HAMBLIN LLP 701 E Front Avenue, Suite 101 P.O. Box E Coeur d'Alene, ID 83816-2530 <i>Attorneys for Defendant</i>
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Deborah Hylton

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FRONT ELEVATION



RIGHT ELEVATION

	SYSTEM TECHNOLOGIES OFFICE BUILDING ELEVATIONS	Scale: 1/4" = 1' Overall dimensions: 10'-0" x 10'-0" 1:1,200	RESIDENTIAL BUILDING DESIGN 2007.780.0074
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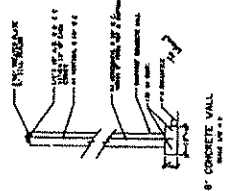
© 2000 Blackwell Science Ltd

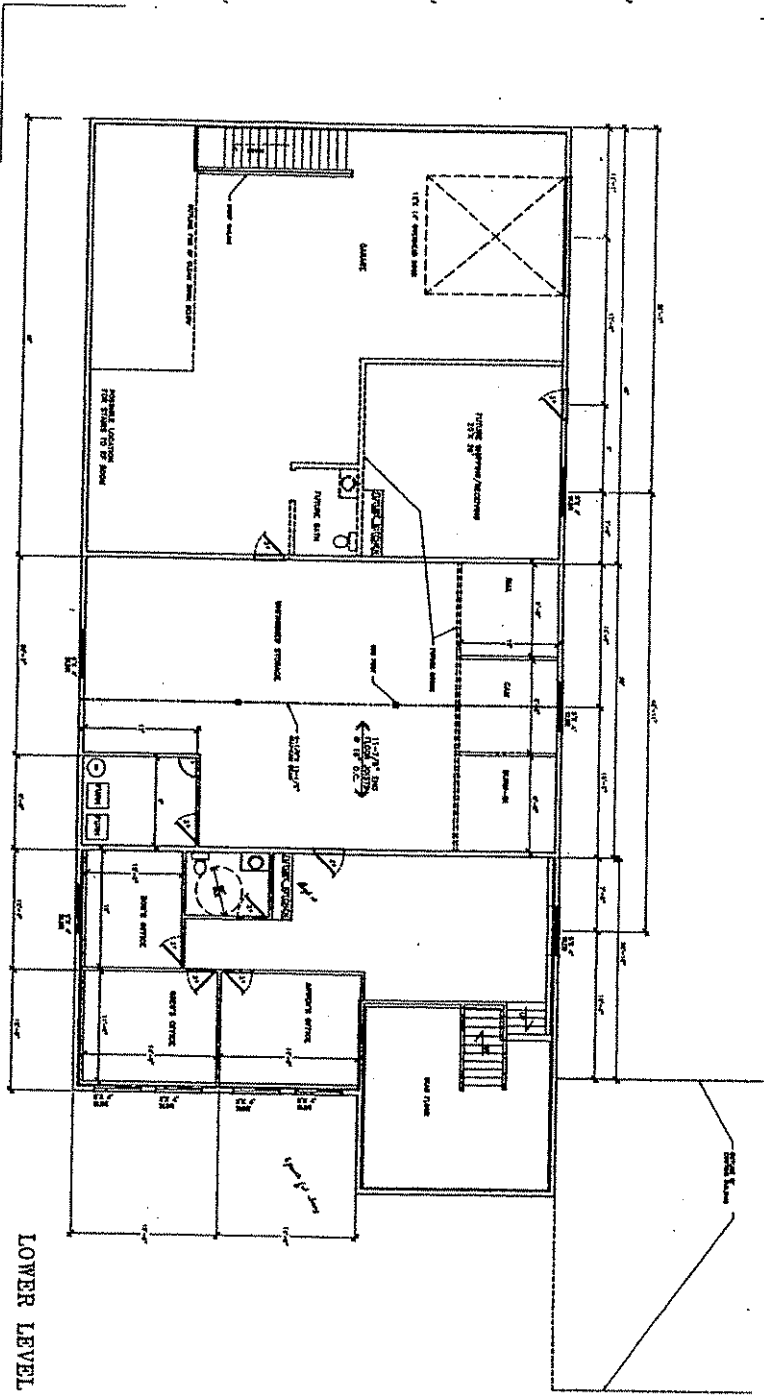
EXHIBIT

A

Tables.

030





LOWER LEVEL

REVISIONS

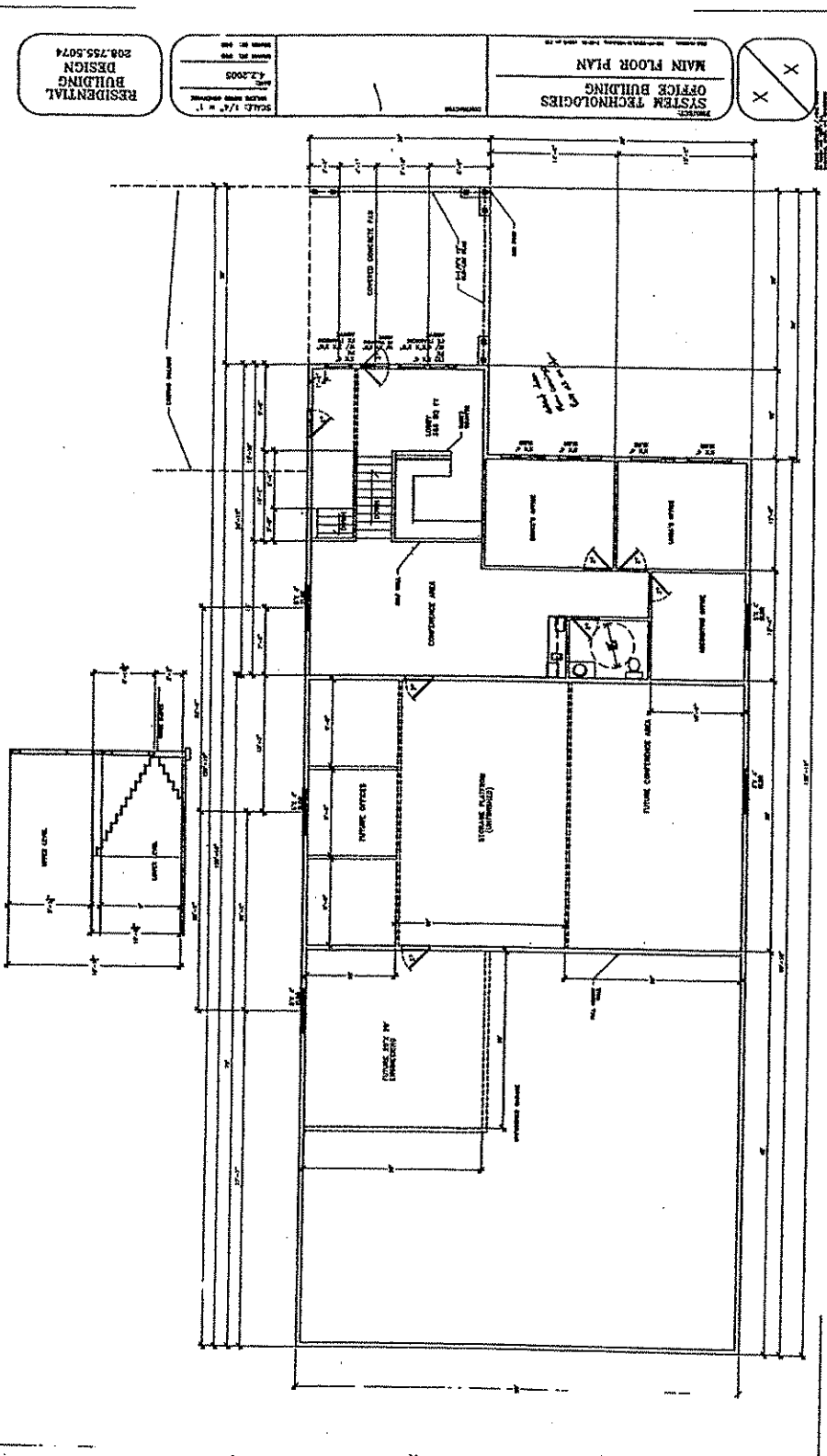


PROJECT:
SYSTEM TECHNOLOGIES
OFFICE BUILDING
LOWER LEVEL

CONTRACTOR

SCALE: 1/4" = 1'
DATE: 4.2.2005
DRAWN BY: [blank]
CHECKED BY: [blank]

RESIDENTIAL
BUILDING
DESIGN
208.755.5074



DESIGN/BUILD AGREEMENT

This agreement between SPOKANE STRUCTURES, INC. and Systemstechnologies sets forth the scope of the work to be performed by SPOKANE STRUCTURES, INC. in the design and construction of an office and warehouse of approximately 7950 sq. ft. located in Hayden, Idaho. Spokane Structures, Inc. agrees to design, engineer, and draft plans in preparation of all documents/drawings required to enable the owner and contractor to agree on a final design and cost of construction to be performed. As a minimum the drawings to be prepared should include:

1. Site and location plans to determine building location and elevation, set backs from property lines and utility locations.
2. Building foundations, slabs and sidewalks.
3. Building floor plans.
4. Schedules of doors, windows, finishes, etc.
5. Exterior building elevation to show style, form and finish.
6. Building sections to show sufficient detail required to achieve style and to show code compliance.
7. Electrical system layout.
8. Heating, air conditioning and ventilation to show all equipment and ducting.
9. Plumbing system layout including location of all special requirements, hose bibs, etc.

A final cost for construction will be provided upon completion of the plans and approval from the City of Hayden Building Department. The cost for construction is not to exceed \$605,000.00, which includes all costs associated with construction, including overhead and profit. Change orders will be handle in writing only, and billed at cost of change plus 20% for profit and overhead. Billing for construction will be monthly progress billing on the percentage of completion method. This agreement is contingent upon the owners getting financing. Should financing not be obtained Spokane Structures, Inc. will be paid \$5000.00 for the plans. A \$2,500.00 retainer is required at signing of this agreement.

By *RL* 9/28/06
SPOKANE STRUCTURES, INC. DATE

By *Equitable Investment, LLC*
Jordan K. Twining *Hamber Hana*
OWNER DATE

By _____
OWNER DATE



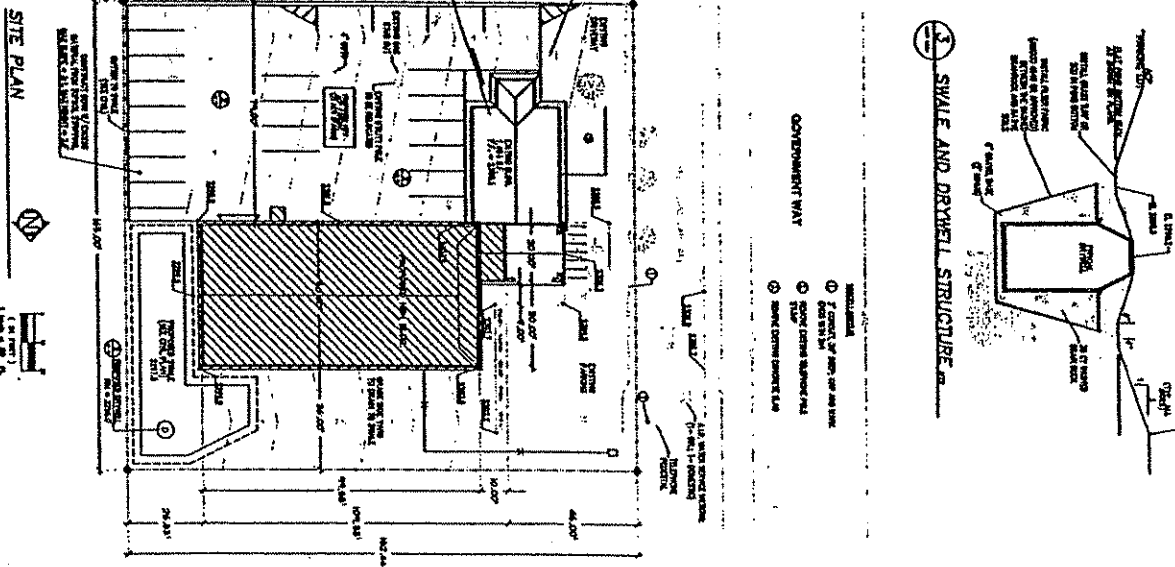
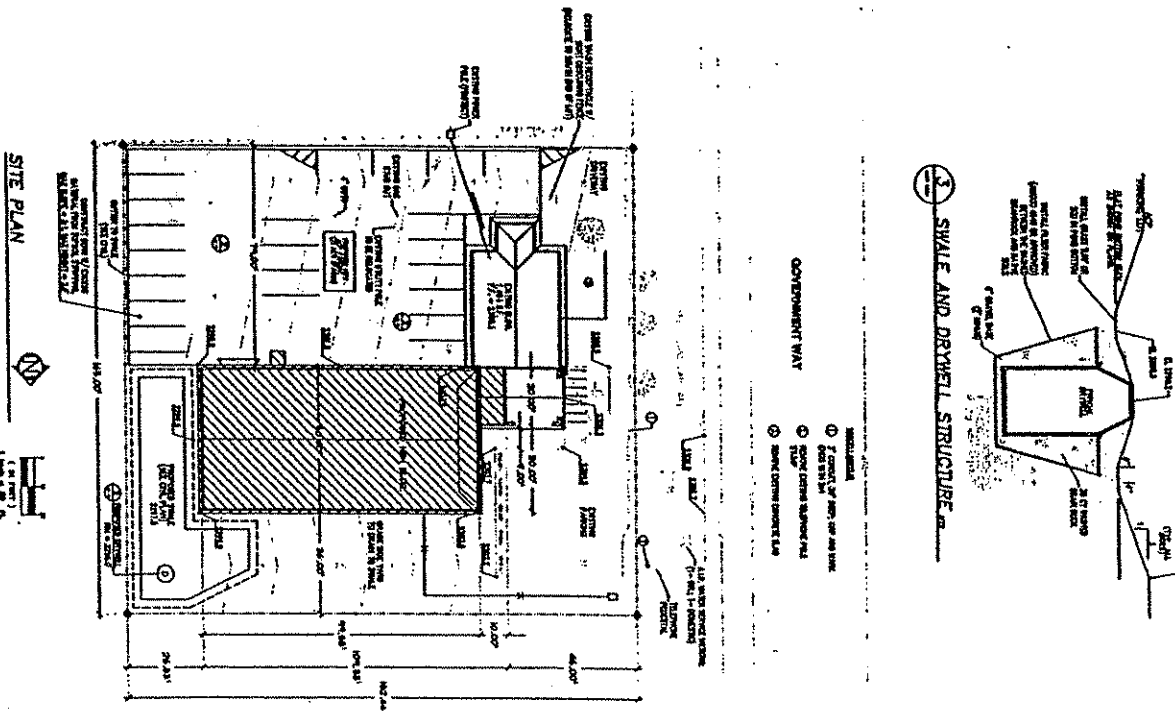
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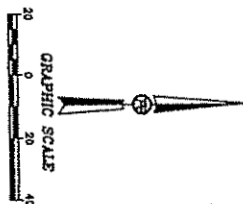
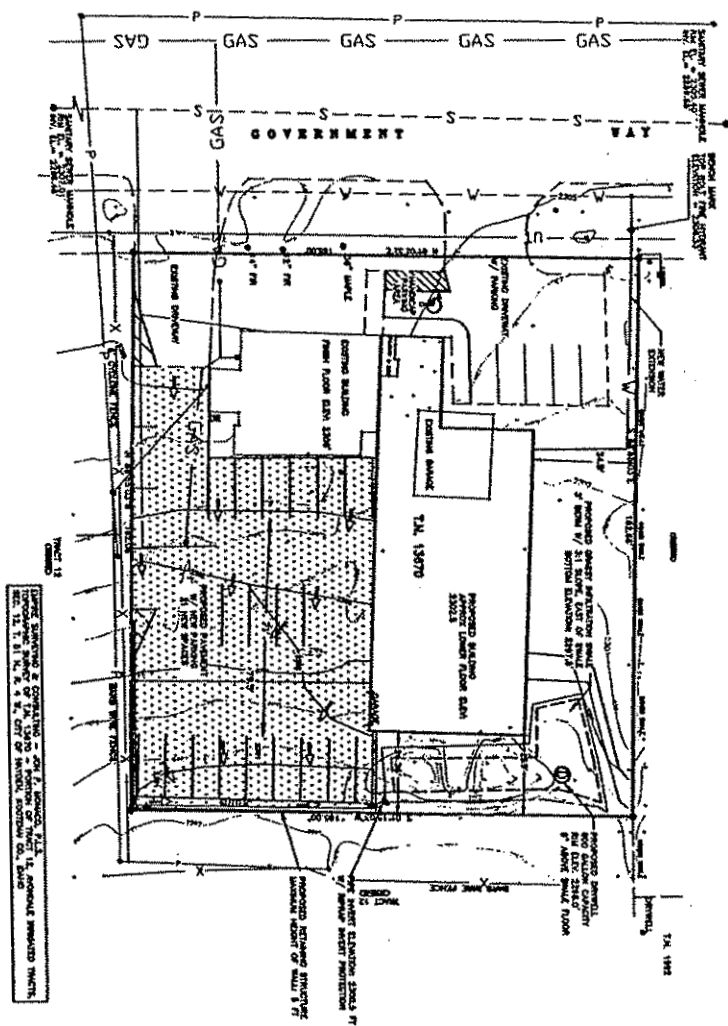
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GOES IN EFFECT FOR THIS REVIEW:

- [illegible]





LEGEND

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NOTES

himself to say he looked from the time of Alcala's murder to Lorraine's last.



System Technologies
Hayden, Idaho
Proposed Site Plan

Hayden, Idaho

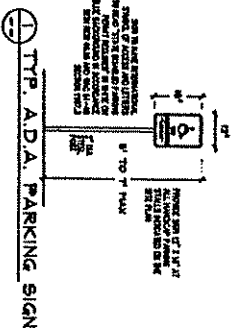
Proposed Site Plan

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CODES IN EFFECT FOR THIS REVIEW:

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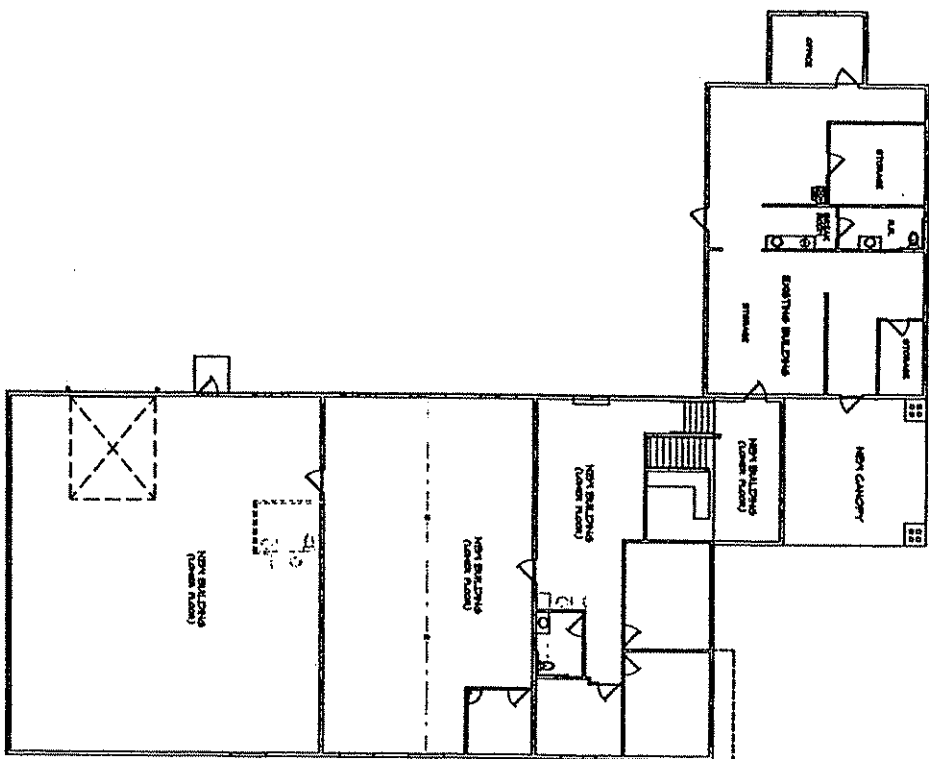
CODES IN EFFECT FOR THIS REVIEW:



① TYP. A.D.A. PARKING SIGN



SITE PLAN



NEW & EXISTING BUILDING(S) LAYOUT
SCALE: 1/8" = 1'-0"



By	Revision	Date
AS	1	10-11-07
AS	2	10-11-07
AS	3	10-11-07
AS	4	10-11-07
AS	5	10-11-07
AS	6	10-11-07
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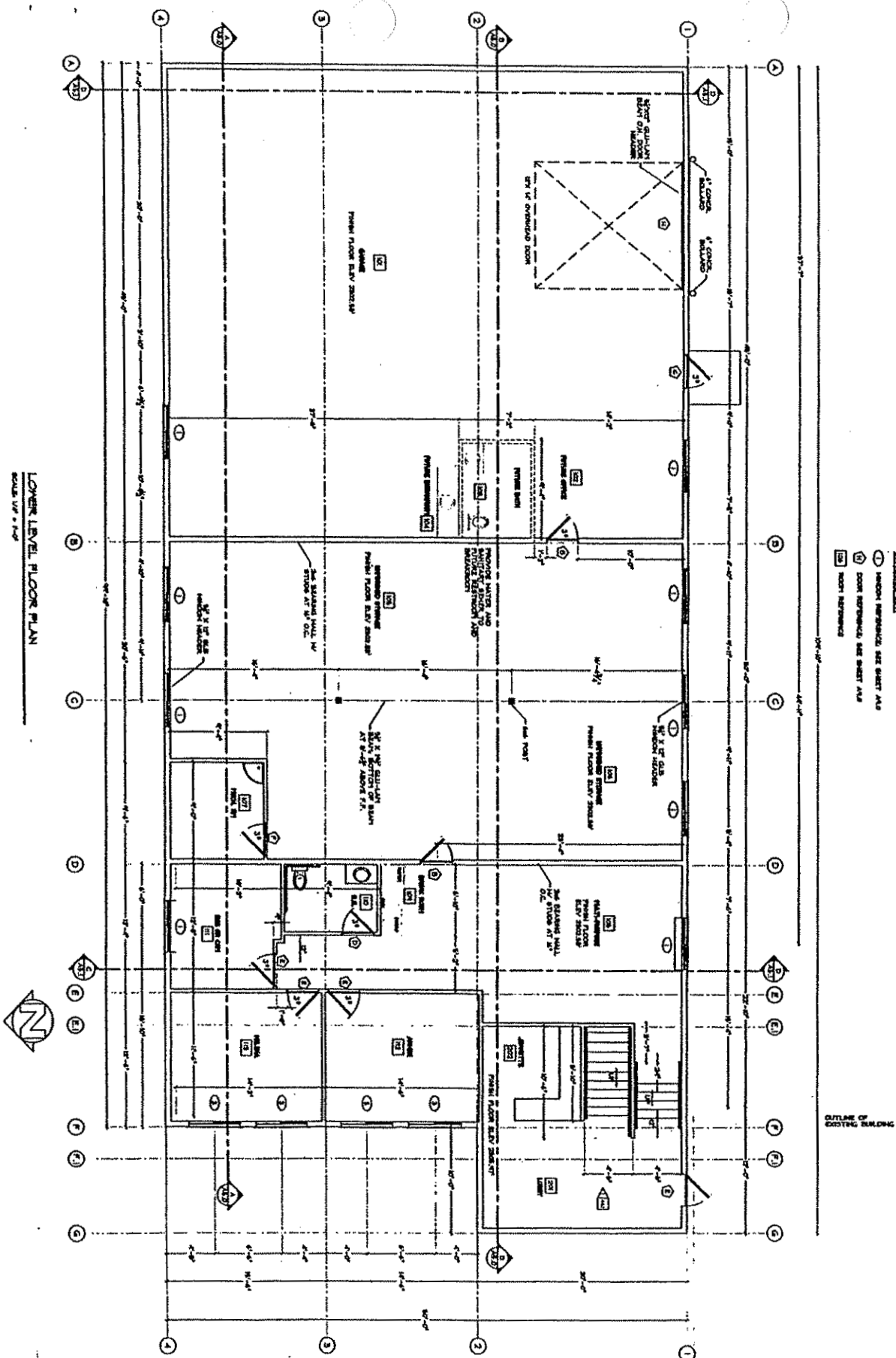


SYSTEM TECHNOLOGIES
1110 N. GORDON ST.
WATSON, CO. 80538

PROJECT NO. 1110
DATE 10-11-07

Project No.	Rev.
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1110	2
1110	3
1110	4
1110	5
1110	6
1110	7
1110	8
1110	9
1110	10

EXISTING & NEW
LAYOUT



LOWER LEVEL FLOOR PLAN

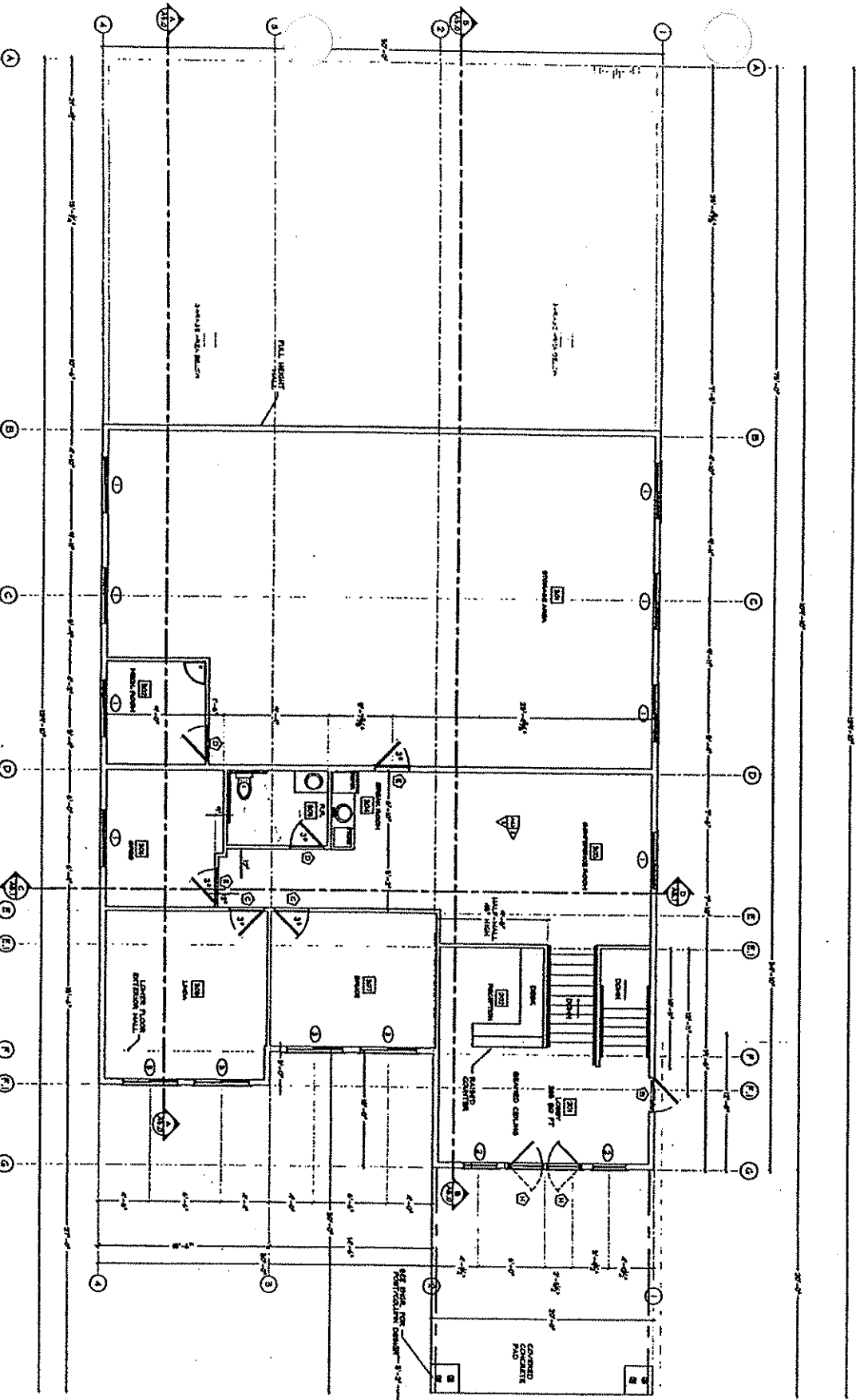
SPRINKLE STING SYSTEM, INC.
 310 NORTH LILLIAN RD
 SPRING, VA
 PH 508 827 0605
 FX 804 271 2003

**SYSTEM
TECHNOLOGIES**

5W 1/4 S12, T12M, R12M, R12M
 PARCEL: H-0456-12-012-40
 15310 N. GOVERNMENT ST.,
 SAUNDERS, DAVID SCOTT
 Project Mgr. Mr.
 Drawn T2 1
 Drawn 1
 Checked
 Date 3-16-07
 Sheet Contents
 MAIN LEVEL
 FLOOR PLAN

MANUEL
FLORES

A3.1



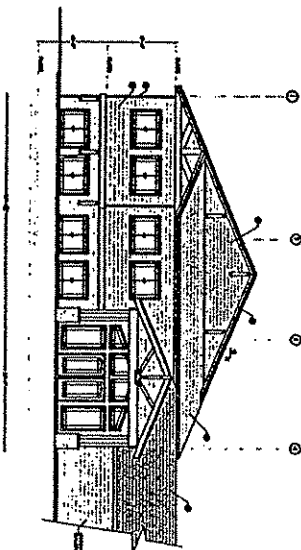
MAIN LEVEL FLOOR PLAN
SCALE: 1/4" = 1'-0"





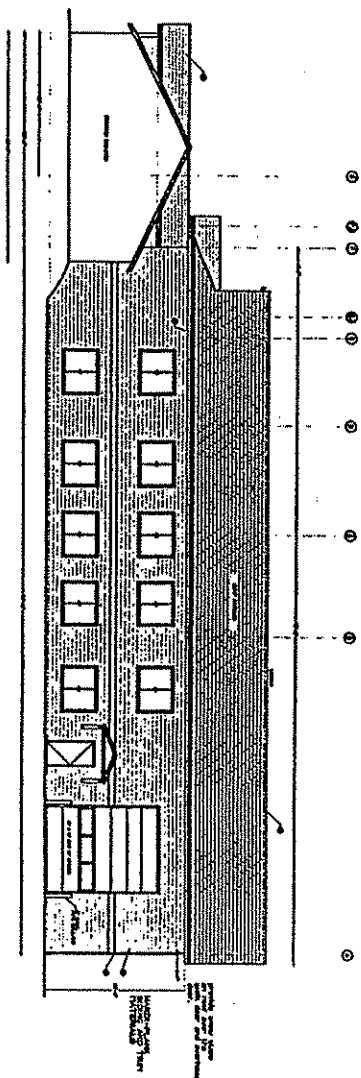
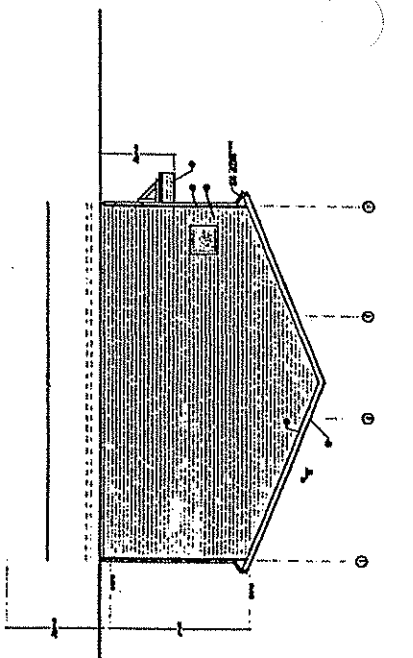


- 1. **Identify the problem.**
- 2. **Define the problem.**
- 3. **Identify the causes.**
- 4. **Identify the effects.**
- 5. **Identify the stakeholders.**
- 6. **Identify the resources.**
- 7. **Identify the constraints.**
- 8. **Identify the risks.**
- 9. **Identify the opportunities.**
- 10. **Identify the solutions.**



INVESTMENT DIVISION
STOCKS
RESEARCH

REPORT SUBJECT'S NAME



FOUO INFORMATION

Date	Revision	By
5-8-02	INTERNAL REVIEW	DCJ
11-22-08	INTERNAL REVIEW	DCJ
10-10-08	INTERNAL REVIEW	DCJ
10-08-08	INTERNAL REVIEW	DCJ
08-22-08	INTERNAL REVIEW	DCJ
	INTERNAL CLIENT REVIEW	DCJ

SPECIALTIES STIMOTONIX, INC.
610 NORTH HALLAM RD
BROOKLYN, NY
PH 800.327.2008
PH 800.327.2008
FX 800.327.2008

Project:
SYSTEM
TECHNOLOGIES

SW 1/4 512, T31N, R4E 6E
PACEL, N-0400-12-012-A4

Drawn	12
Drawn	
Overdue	
Date	2-15-07

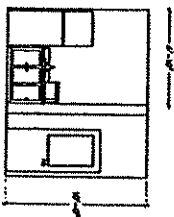
EXTERIOR ELEVATIONS

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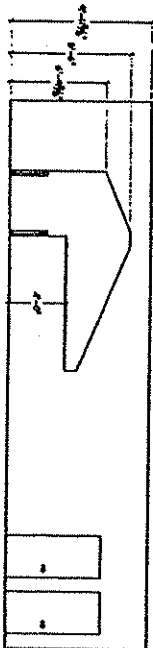
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Program 1, 1963

1 LOBBY ELEVATION



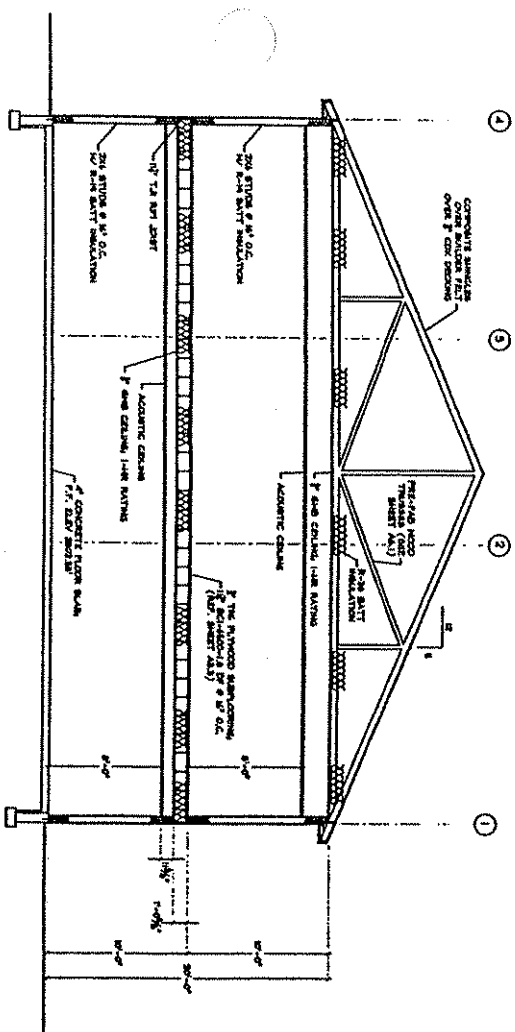
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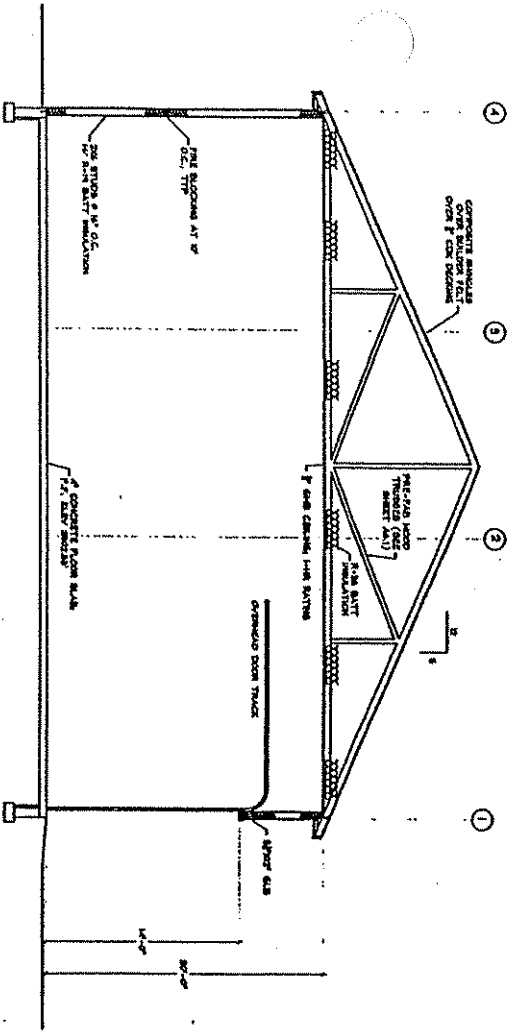
MAN LEVEL ELEVATION

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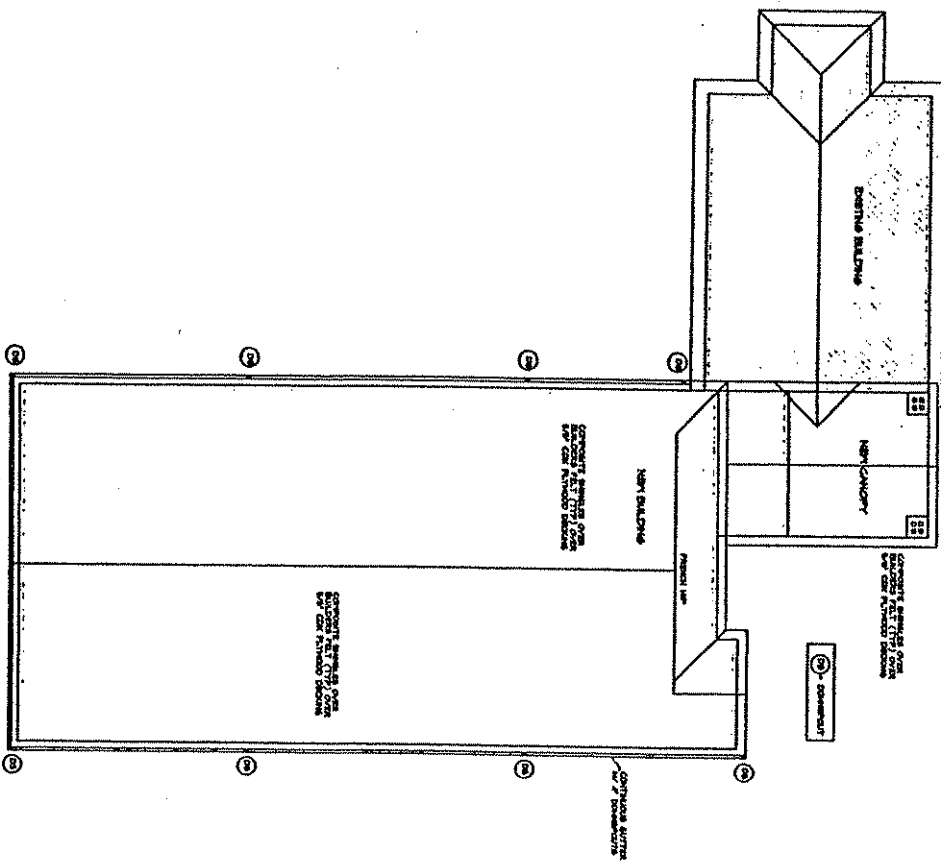


BUILDING SECTION C-C
SCALE 1/8" = 1'-0"



BUILDING SECTION D-D
SCALE 1/8" = 1'-0"

SSS SPECIAL STRUCTURES, INC. 4400 WILSON AVENUE WILSON, NJ 07094 TEL: 908/227-0000 FAX: 908/227-0001		Project: Building System Technologies	
Project No.: 11350 N. COOPERSTOWN PK. COOPERSTOWN, NJ 08823		Date: 3-18-07	
Project Name: Building Sections		Scale: 1/8" = 1'-0"	
Project No.: 11350 N. COOPERSTOWN PK. COOPERSTOWN, NJ 08823		Date: 3-18-07	
Project Name: Building Sections		Scale: 1/8" = 1'-0"	



ARCHITECTURAL ROOF PLAN

SCALE: 1/4" = 1'-0"



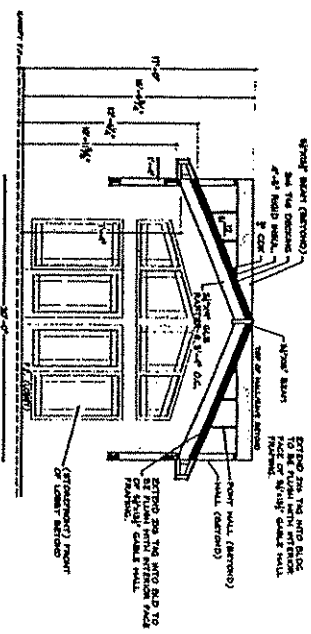
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SYSTEM TECHNOLOGIES
11110 N. GARDNER HWY.
MILWAUKEE, WI 53222
TEL: 414.762.1000
FAX: 414.762.1001
WWW.SYST-TECH.COM

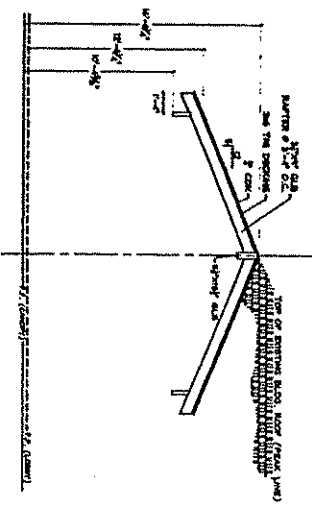
ARCHITECTURAL ROOF PLAN

A6.0

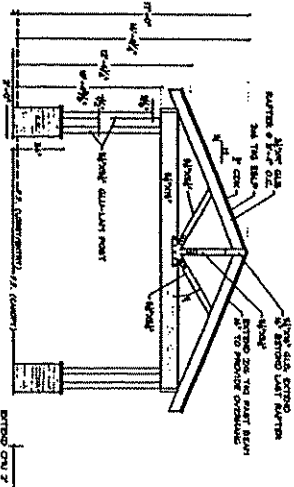
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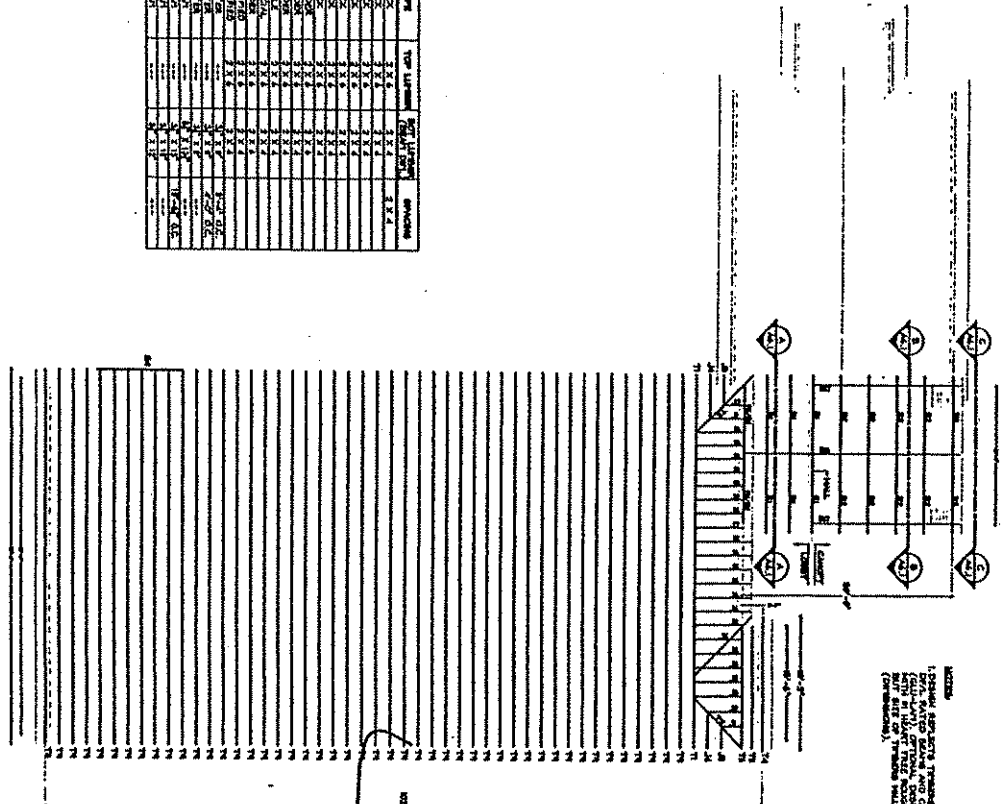
SECTION A-A: LOBBY ROOF DETAIL
SCALE 1/4" = 1'-0"



SECTION B-B: CANOPY ROOF DETAIL



SECTION C-C: CANOPY ROOF (END) DETAIL

[illegible]

1. DESIGN SUBJECT'S TENDENCY TO BE SELF-DEFENDING BEING AND COLLECTIVE (ALL-LEAD), OPTIMAL DESIGN CAN BE BUILT IN HEART TREE FROM 3-4-5 OF, BUT SITE OF TENDENCY WILL CHANGE (PREDICTABLE).

DEAF
5707

STRUCTURAL ROOF PLAN
SCALE: 1/8" = 1'-0"





SPokane Streetcar, Inc.
818 North Mallan Rd
Spokane, WA
Ph: 609 327 0444
FAX: 609 327 4062

**SYSTEM
TECHNOLOGIES**

SW 1/4 SEC. 23N, R4W B2E
PARCEL H-0440-12-013-40
11310 N. CONDEMDINT WY.
HARDEN, DAVID S. 8133

Project No.	11
Owner	11
Design	11
Contract	11
Date	11-11-11

MAIN LEVEL;
REFLECTED
CEILING PLAN

Shovel Marks

A7.0

Sl. No.	Particulars	1971	1972
1	1971-72	100.00	100.00
2	1972-73	100.00	100.00
3	1973-74	100.00	100.00
4	1974-75	100.00	100.00
5	1975-76	100.00	100.00
6	1976-77	100.00	100.00
7	1977-78	100.00	100.00
8	1978-79	100.00	100.00
9	1979-80	100.00	100.00
10	1980-81	100.00	100.00
11	1981-82	100.00	100.00
12	1982-83	100.00	100.00
13	1983-84	100.00	100.00
14	1984-85	100.00	100.00
15	1985-86	100.00	100.00
16	1986-87	100.00	100.00
17	1987-88	100.00	100.00
18	1988-89	100.00	100.00
19	1989-90	100.00	100.00
20	1990-91	100.00	100.00
21	1991-92	100.00	100.00
22	1992-93	100.00	100.00
23	1993-94	100.00	100.00
24	1994-95	100.00	100.00
25	1995-96	100.00	100.00
26	1996-97	100.00	100.00
27	1997-98	100.00	100.00
28	1998-99	100.00	100.00
29	1999-00	100.00	100.00
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33	2003-04	100.00	100.00
34	2004-05	100.00	100.00
35	2005-06	100.00	100.00
36	2006-07	100.00	100.00
37	2007-08	100.00	100.00
38	2008-09	100.00	100.00
39	2009-10	100.00	100.00
40	2010-11	100.00	100.00
41	2011-12	100.00	100.00
42	2012-13	100.00	100.00
43	2013-14	100.00	100.00
44	2014-15	100.00	100.00
45	2015-16	100.00	100.00
46	2016-17	100.00	100.00
47	2017-18	100.00	100.00
48	2018-19	100.00	100.00
49	2019-20	100.00	100.00
50	2020-21	100.00	100.00
51	2021-22	100.00	100.00
52	2022-23	100.00	100.00
53	2023-24	100.00	100.00
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55	2025-26	100.00	100.00
56	2026-27	100.00	100.00
57	2027-28	100.00	100.00
58	2028-29	100.00	100.00
59	2029-30	100.00	100.00
60	2030-31	100.00	100.00
61	2031-32	100.00	100.00
62	2032-33	100.00	100.00
63	2033-34	100.00	100.00
64	2034-35	100.00	100.00
65	2035-36	100.00	100.00
66	2036-37	100.00	100.00
67	2037-38	100.00	100.00
68	2038-39	100.00	100.00
69	2039-40	100.00	100.00
70	2040-41	100.00	100.00
71	2041-42	100.00	100.00
72	2042-43	100.00	100.00
73	2043-44	100.00	100.00
74	2044-45	100.00	100.00
75	2045-46	100.00	100.00
76	2046-47	100.00	100.00
77	2047-48	100.00	100.00
78	2048-49	100.00	10

INTERVIEWED PERSONS WILL BE AS FOLLOWS:

SUPERBOND CHINA (STYL)	12442/24718028	NOZZE
STYL SUPERBOND CHINA (PATT)	1441100006	CONTINENTALIAN
STYL SUPERBOND CHINA (PATT)	1441100006	CONTINENTALIAN

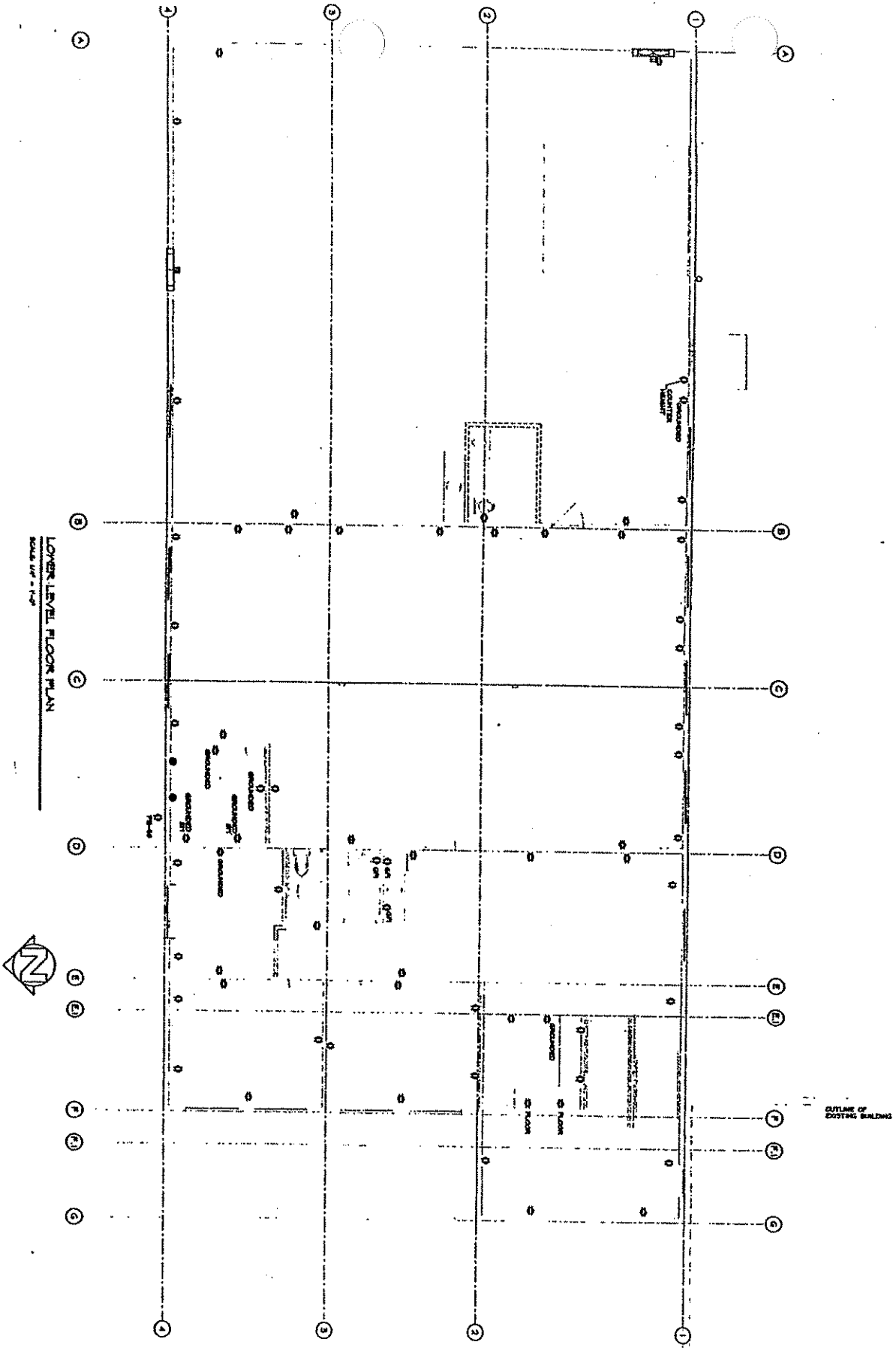
UNAPPROVED ACCESSORY COILS SHALL BE INSTALLED IN COMPLIANCE WITH ASTM C446 AND ASTM C447. 2727 UNAPPROVED COILS THIS (PART)

NO.	NAME	DATE	TIME	TYPE	STATUS	REMARKS
1	JOHN DOE	10/10/2023	08:00	REG	OK	
2	JANE SMITH	10/10/2023	08:05	REG	OK	
3	MIKE JONES	10/10/2023	08:10	REG	OK	
4	SARAH BROWN	10/10/2023	08:15	REG	OK	
5	DAVID MILLER	10/10/2023	08:20	REG	OK	
6	EMILY WILSON	10/10/2023	08:25	REG	OK	
7	CHRISTOPHER ANDERSON	10/10/2023	08:30	REG	OK	
8	AMANDA TAYLOR	10/10/2023	08:35	REG	OK	
9	KEVIN HARRIS	10/10/2023	08:40	REG	OK	
10	STEPHANIE CLARK	10/10/2023	08:45	REG	OK	
11	ANTHONY ROY	10/10/2023	08:50	REG	OK	
12	DIANE GREEN	10/10/2023	08:55	REG	OK	
13	ALAN BAKER	10/10/2023	09:00	REG	OK	
14	HEATHER ADAMS	10/10/2023	09:05	REG	OK	
15	JOHN SMITH	10/10/2023	09:10	REG	OK	
16	JANE DOE	10/10/2023	09:15	REG	OK	
17	MIKE JONES	10/10/2023	09:20	REG	OK	
18	SARAH BROWN	10/10/2023	09:25	REG	OK	
19	DAVID MILLER	10/10/2023	09:30	REG	OK	
20	EMILY WILSON	10/10/2023	09:35	REG	OK	
21	CHRISTOPHER ANDERSON	10/10/2023	09:40	REG	OK	
22	AMANDA TAYLOR	10/10/2023	09:45	REG	OK	
23	KEVIN HARRIS	10/10/2023	09:50	REG	OK	
24	STEPHANIE CLARK	10/10/2023	09:55	REG	OK	
25	ANTHONY ROY	10/10/2023	10:00	REG	OK	
26	DIANE GREEN	10/10/2023	10:05	REG	OK	
27	ALAN BAKER	10/10/2023	10:10	REG	OK	
28	HEATHER ADAMS	10/10/2023	10:15	REG	OK	
29	JOHN SMITH	10/10/2023	10:20	REG	OK	
30	JANE DOE	10/10/2023	10:25	REG	OK	
31	MIKE JONES	10/10/2023	10:30	REG	OK	
32	SARAH BROWN	10/10/2023	10:35	REG	OK	
33	DAVID MILLER	10/10/2023	10:40	REG	OK	
34	EMILY WILSON	10/10/2023	10:45	REG	OK	
35	CHRISTOPHER ANDERSON	10/10/2023	10:50	REG	OK	
36	AMANDA TAYLOR	10/10/2023	10:55	REG	OK	
37	KEVIN HARRIS	10/10/2023	11:00	REG	OK	
38	STEPHANIE CLARK	10/10/2023	11:05	REG	OK	
39	ANTHONY ROY	10/10/2023	11:10	REG	OK	
40	DIANE GREEN	10/10/2023	11:15	REG	OK	
41	ALAN BAKER	10/10/2023	11:20	REG	OK	
42	HEATHER ADAMS	10/10/2023	11:25	REG	OK	
43	JOHN SMITH	10/10/2023	11:30	REG	OK	
44	JANE DOE	10/10/2023	11:35	REG	OK	
45	MIKE JONES	10/10/2023	11:40	REG	OK	
46	SARAH BROWN	10/10/2023	11:45	REG	OK	
47	DAVID MILLER	10/10/2023	11:50	REG	OK	
48	EMILY WILSON	10/10/2023	11:55	REG	OK	
49	CHRISTOPHER ANDERSON	10/10/2023	12:00	REG	OK	
50	AMANDA TAYLOR	10/10/2023	12:05	REG	OK	
51	KEVIN HARRIS	10/10/2023	12:10	REG	OK	
52	STEPHANIE CLARK	10/10/2023	12:15	REG	OK	
53	ANTHONY ROY	10/10/2023	12:20	REG	OK	
54	DIANE GREEN	10/10/2023	12:25	REG	OK	
55	ALAN BAKER	10/10/2023	12:30	REG	OK	
56	HEATHER ADAMS	10/10/2023	12:35	REG	OK	
57	JOHN SMITH	10/10/2023	12:40	REG	OK	
58	JANE DOE	10/10/2023	12:45	REG	OK	
59	MIKE JONES	10/10/2023	12:50	REG	OK	
60	SARAH BROWN	10/10/2023	12:55	REG	OK	
61	DAVID MILLER	10/10/2023	13:00	REG	OK	
62	EMILY WILSON	10/10/2023	13:05	REG	OK	
63	CHRISTOPHER ANDERSON	10/10/2023	13:10	REG	OK	
64	AMANDA TAYLOR	10/10/2023	1			

[illegible]

Figure 1 consists of six schematic diagrams labeled (a) through (f). Diagrams (a), (c), and (e) are top-down views of the experimental setup. Diagrams (b), (d), and (f) are side views. The diagrams illustrate the subject's position relative to the screen and target. In (a), (c), and (e), the subject is on the left, and the screen is on the right. The target is a small rectangle on the screen. In (b), (d), and (f), the subject is on the left, and the screen is on the right. The target is a small rectangle on the screen. The diagrams show the subject's hand reaching for the target. Labels include 'Subject', 'Screen', 'Target', and 'Hand'.

[illegible]



SYSTEM TECHNOLOGIES 11110 N. GARDENWAY, SUITE 200 DALLAS, TEXAS 75243		PROJECT: 11110 N. GARDENWAY, SUITE 200 DALLAS, TEXAS 75243																	
DATE: 11/1/97 BY: [Signature] CHECKED: [Signature] APPROVED: [Signature]		REVISIONS: <table border="1"> <thead> <tr> <th>No.</th> <th>Description</th> <th>By</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Initial Design</td> <td>[Signature]</td> <td>11/1/97</td> </tr> <tr> <td>2</td> <td>Revised Design</td> <td>[Signature]</td> <td>11/1/97</td> </tr> <tr> <td>3</td> <td>Final Design</td> <td>[Signature]</td> <td>11/1/97</td> </tr> </tbody> </table>		No.	Description	By	Date	1	Initial Design	[Signature]	11/1/97	2	Revised Design	[Signature]	11/1/97	3	Final Design	[Signature]	11/1/97
No.	Description	By	Date																
1	Initial Design	[Signature]	11/1/97																
2	Revised Design	[Signature]	11/1/97																
3	Final Design	[Signature]	11/1/97																

E1.0



610 NORTH WALLEN RD
ALPINE, WA
PH 808.877.2285
FX 808.877.4021

**SYSTEM
TECHNOLOGIES**

57 1/4 S.E., T31N, R4W BM
PARCEL N-0460-12-012-40
11310 N. GOVERNMENT ST.
HAYDEN, IDAHO 83415

Project No.	2
-------------	---

Order	74
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Overall	1
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Date	3-18-07
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Short Comments

MAIN LEVEL

FLOOR PLAN

100

10

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100

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41.3

100

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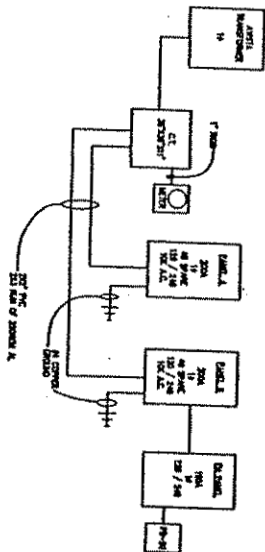
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BEALTS, W. & F. 1987



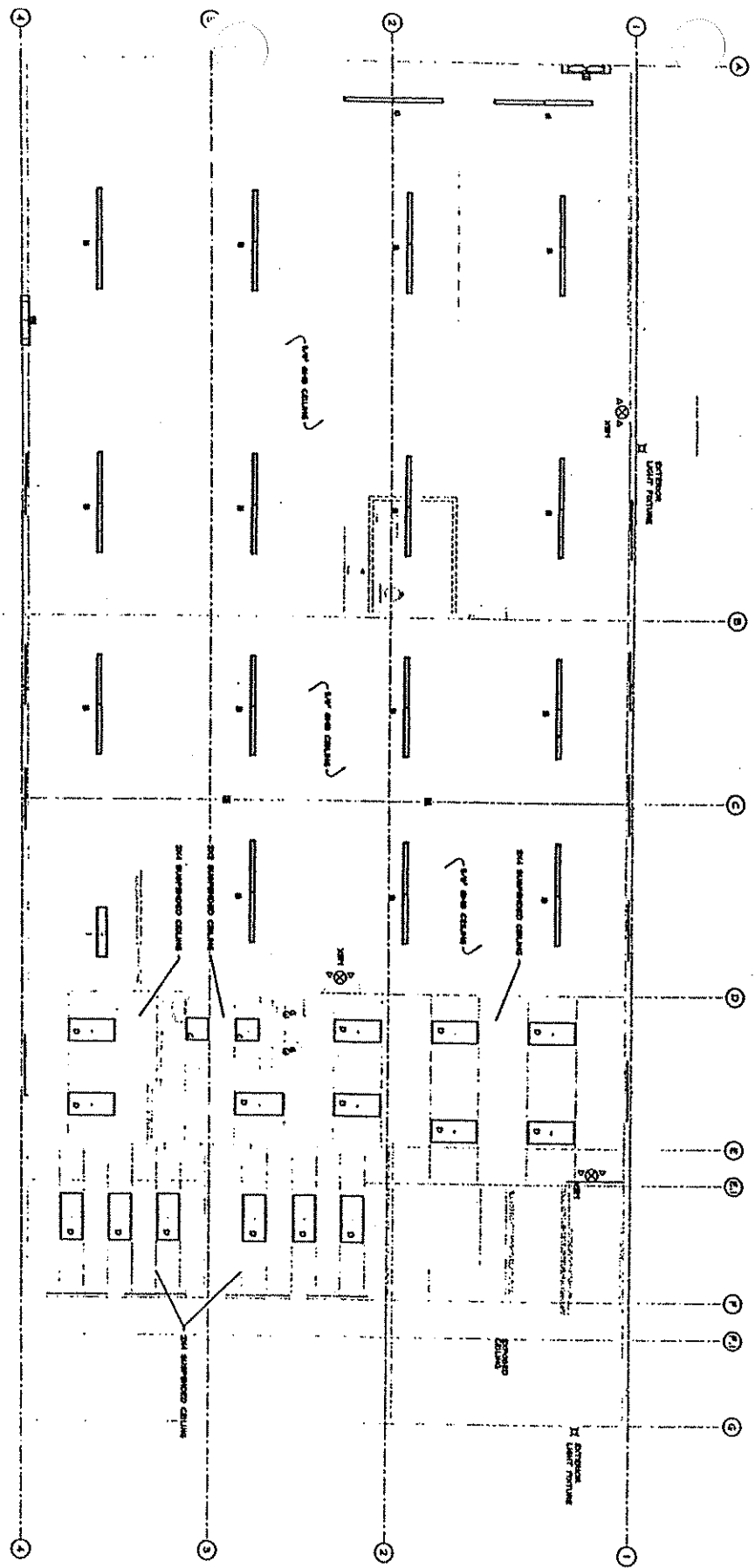
[illegible][illegible]

PANEL A SCHEDULE



PANEL B SCHEDULE

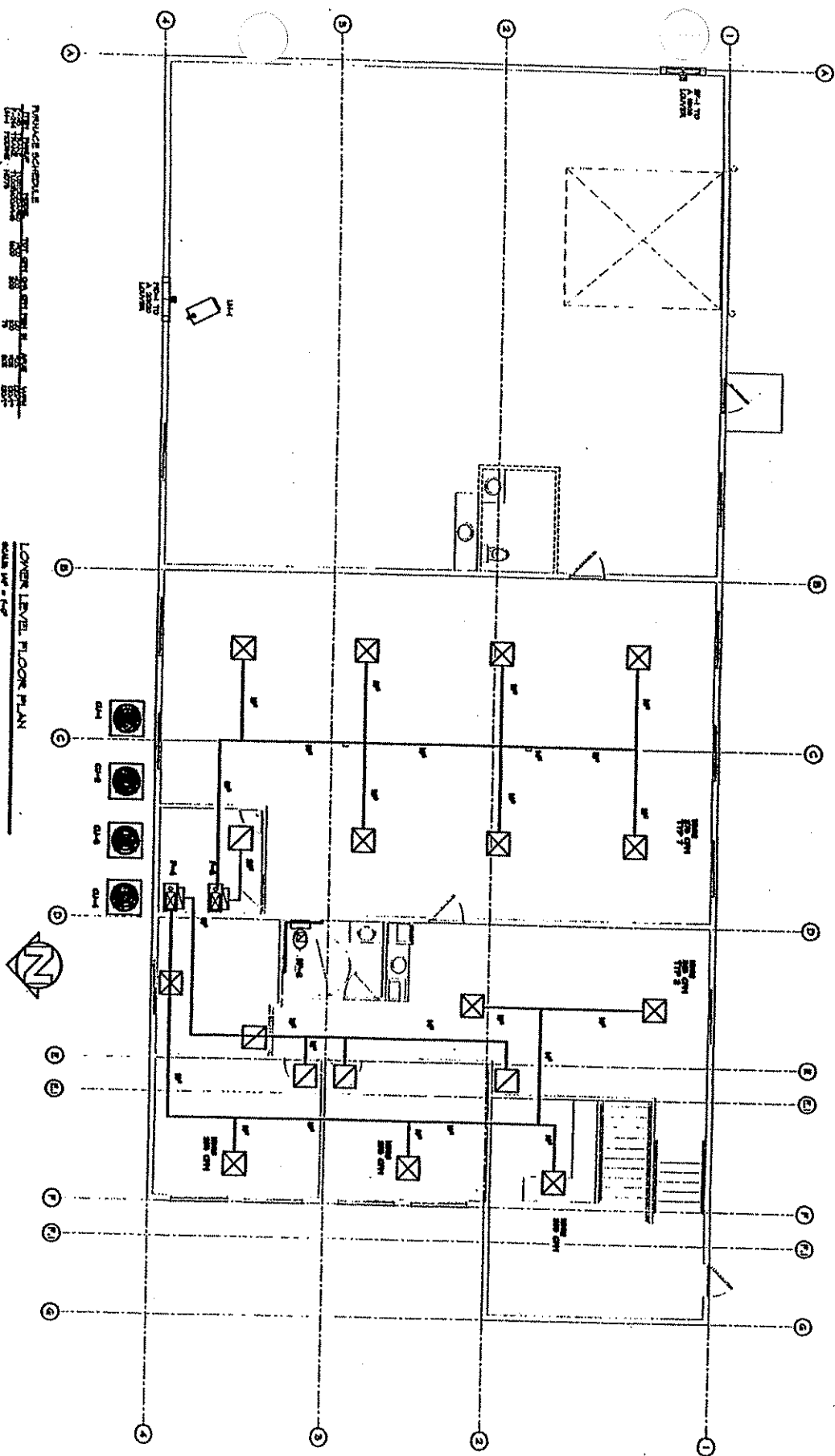
NO.	DATE	DESCRIPTION	BY	CHKD.
1	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS
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3	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS
4	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS
5	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS
6	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS
7	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS
8	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS
9	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS
10	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS
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12	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS
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16	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS
17	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS
18	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS
19	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS
20	10/10/80	REVISED	W. J. HARRIS	W. J. HARRIS



LOWER LEVEL FLOOR PLAN
SCALE: 1/4" = 1'-0"



SYSTEM TECHNOLOGIES 1111 N. GARDEN ST. HOUSTON, TEXAS 77002 (713) 861-1111		PROJECT 1111 N. GARDEN ST. HOUSTON, TEXAS 77002 (713) 861-1111	
DESIGNER 1111 N. GARDEN ST. HOUSTON, TEXAS 77002 (713) 861-1111		DATE 10/10/80	
PROJECT NO. 1111 N. GARDEN ST. HOUSTON, TEXAS 77002 (713) 861-1111		PROJECT NAME 1111 N. GARDEN ST. HOUSTON, TEXAS 77002 (713) 861-1111	
PROJECT NO. 1111 N. GARDEN ST. HOUSTON, TEXAS 77002 (713) 861-1111		PROJECT NAME 1111 N. GARDEN ST. HOUSTON, TEXAS 77002 (713) 861-1111	



MECHANICAL SCHEDULE

ITEM	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1	1/2" GALV. STEEL	100	LB	0.15	15.00
2	1/4" GALV. STEEL	100	LB	0.10	10.00
3	1/2" GALV. STEEL	100	LB	0.15	15.00
4	1/4" GALV. STEEL	100	LB	0.10	10.00
5	1/2" GALV. STEEL	100	LB	0.15	15.00
6	1/4" GALV. STEEL	100	LB	0.10	10.00
7	1/2" GALV. STEEL	100	LB	0.15	15.00
8	1/4" GALV. STEEL	100	LB	0.10	10.00
9	1/2" GALV. STEEL	100	LB	0.15	15.00
10	1/4" GALV. STEEL	100	LB	0.10	10.00

MECHANICAL SCHEDULE

ITEM	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1	1/2" GALV. STEEL	100	LB	0.15	15.00
2	1/4" GALV. STEEL	100	LB	0.10	10.00
3	1/2" GALV. STEEL	100	LB	0.15	15.00
4	1/4" GALV. STEEL	100	LB	0.10	10.00
5	1/2" GALV. STEEL	100	LB	0.15	15.00
6	1/4" GALV. STEEL	100	LB	0.10	10.00
7	1/2" GALV. STEEL	100	LB	0.15	15.00
8	1/4" GALV. STEEL	100	LB	0.10	10.00
9	1/2" GALV. STEEL	100	LB	0.15	15.00
10	1/4" GALV. STEEL	100	LB	0.10	10.00

SYSTEM TECHNOLOGIES 11111 N. CONGRESS ST. SUITE 100 DALLAS, TEXAS 75243 (214) 343-1111 FAX (214) 343-1112 WWW.SYSTEC.COM		PROJECT NO. _____ DATE _____ DRAWN BY _____ CHECKED BY _____ APPROVED BY _____
LOWER LEVEL MECHANICAL M1.0		PROJECT NO. _____ DATE _____ DRAWN BY _____ CHECKED BY _____ APPROVED BY _____

Date	Production	By
1. 10/1/58	1. 10/1/58	1. 10/1/58
2. 10/2/58	2. 10/2/58	2. 10/2/58
3. 10/3/58	3. 10/3/58	3. 10/3/58
4. 10/4/58	4. 10/4/58	4. 10/4/58
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31. 10/31/58	31. 10/31/58	31. 10/31/58

SPRINGFIELD STREET STREET, 2ND
618 NORTH HALLWAY RD
 BRIDGEVIEW, ILL
 PH 508.472.2544
 FX 508.472.4041

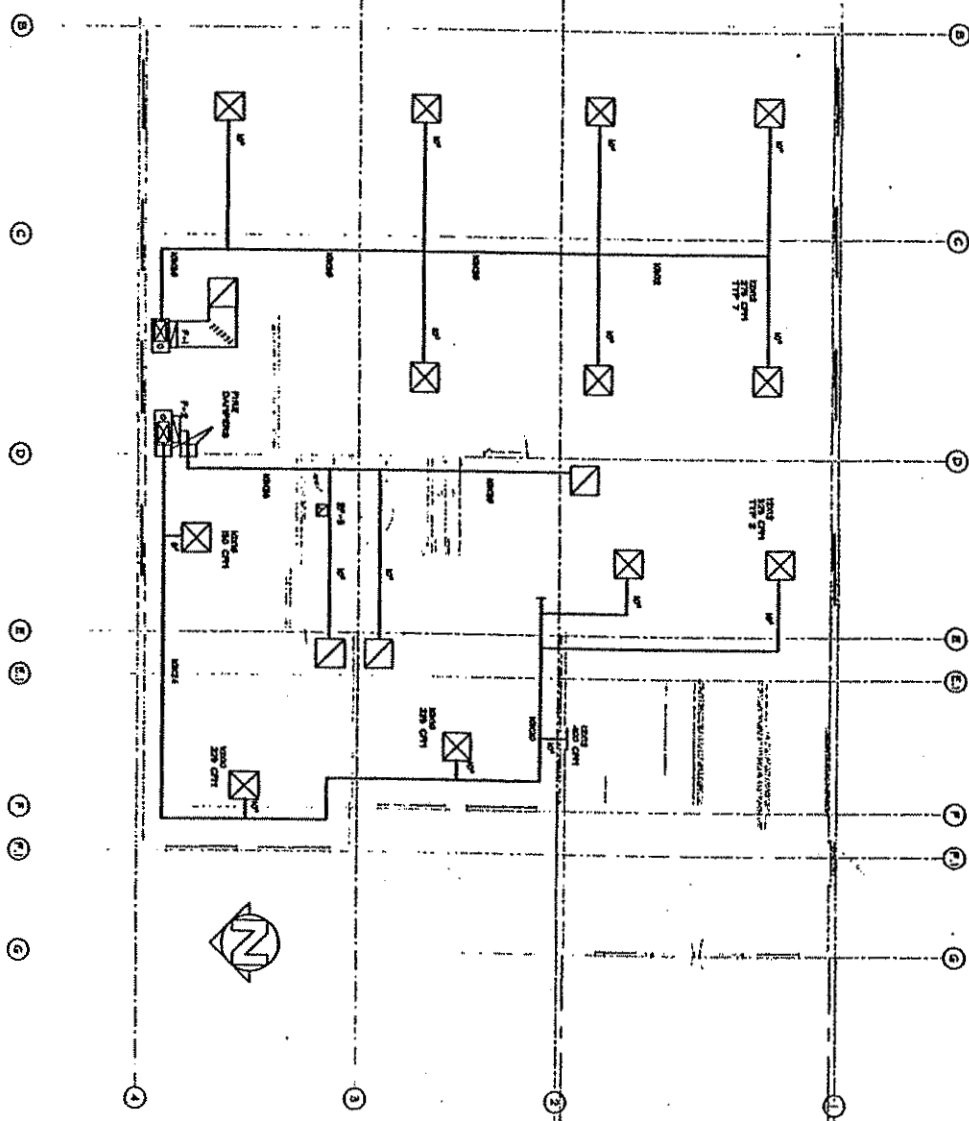
**SYSTEM
TECHNOLOGIES**

SW 1/4 S12, T51N, R6W BM PARCEL N-0460-12-013-00 11310 N. CONVENT ROAD WY, HAYDEN, COLORADO 80833	
Precinct Map.	RC
District	72
District	
Candidate	
Date	3-18-07

MAIN LEVEL MECHANICAL

Sheet No. 1

Σ1.1



MAIN LEVEL FLOOR PLAN
SCALE 1/8" = 1'-0"

- [illegible]

FINANCE SCHEDULE		TOTAL COST OF WORK		TOTAL COST OF WORK	
Item	Amount	Item	Amount	Item	Amount
1. Labor	100.00	2. Material	50.00	3. Equipment	25.00
4. Travel	10.00	5. Food	5.00	6. Lodging	15.00
7. Telephone	5.00	8. Postage	2.00	9. Printing	1.00
10. Other	5.00	11. Total	198.00	12. Total	198.00

DOLLAR PAY SCHEDULE				
UNIT	MONTH	TOTAL COST	UNIT	MONTH
1st	1st	1.00	1st	1st
2nd	2nd	1.00	2nd	2nd
3rd	3rd	1.00	3rd	3rd
4th	4th	1.00	4th	4th
5th	5th	1.00	5th	5th
6th	6th	1.00	6th	6th
7th	7th	1.00	7th	7th
8th	8th	1.00	8th	8th
9th	9th	1.00	9th	9th
10th	10th	1.00	10th	10th
11th	11th	1.00	11th	11th
12th	12th	1.00	12th	12th



SCALE 141 to 149

2.0

LOWER LEVEL
PLUMBING
PLAN

**SYSTEM
TECHNOLOGIES**

SPECIALTIES
810 NORTH LAYTON RD
SPOKANE, WA
PH 807/877-0588
FX 807/877-0002



Date	Revision	By
10-19-09	INTERNAL REVIEW	NCJ
10-22-09	INTERNAL REVIEW	NCJ
10-19-09	INTERNAL REVIEW	NCJ
10-08-09	INTERNAL REVIEW	NCJ

Revisions	Date
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2	05/11/22
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99	05/11/22
100	05/11/22



SYSTEM TECHNOLOGIES, INC.
610 NORTH HALLWAY
SPRINGFIELD, VA 22151
PH: 703.277.0000
FAX: 703.277.0001

PROJECT
SYSTEM TECHNOLOGIES

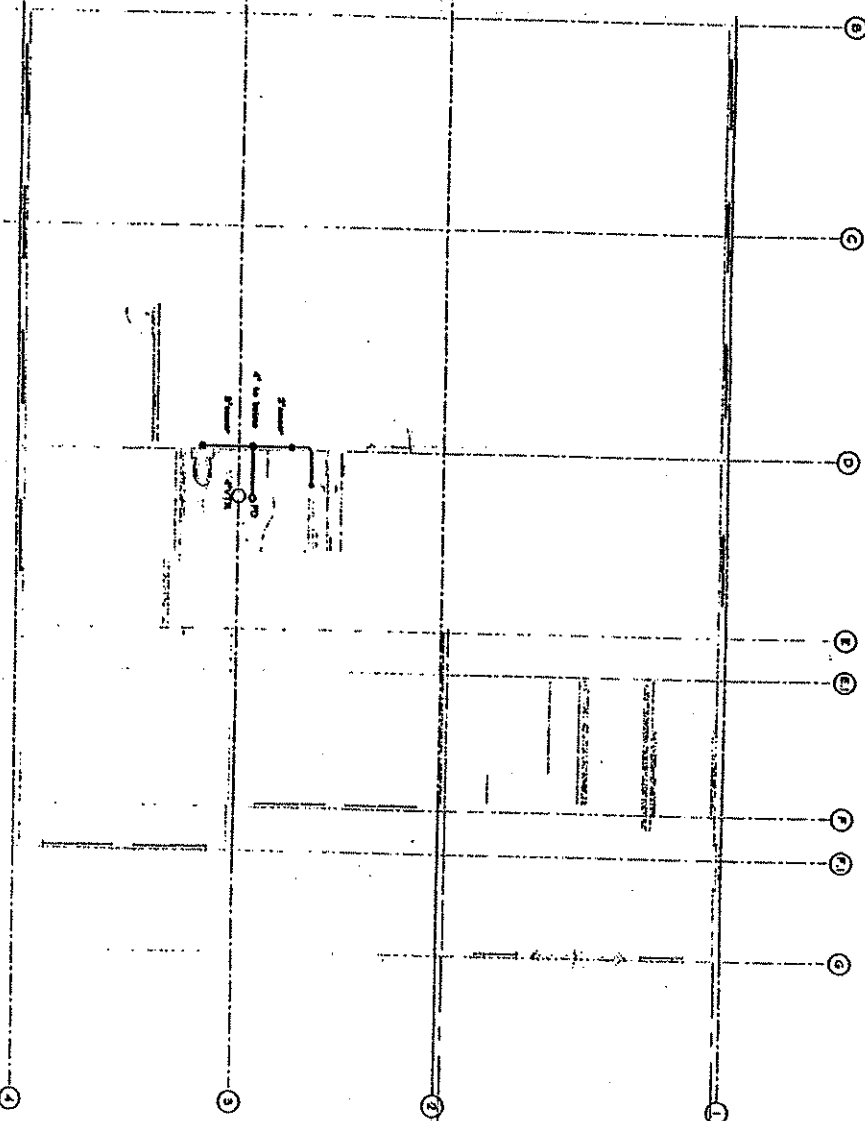
1110 N. CONSUMERS ST.
MURFREESBORO, TN 37132
DATE: 05-18-22

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MAIN LEVEL PLUMBING PLAN

Sheet No.

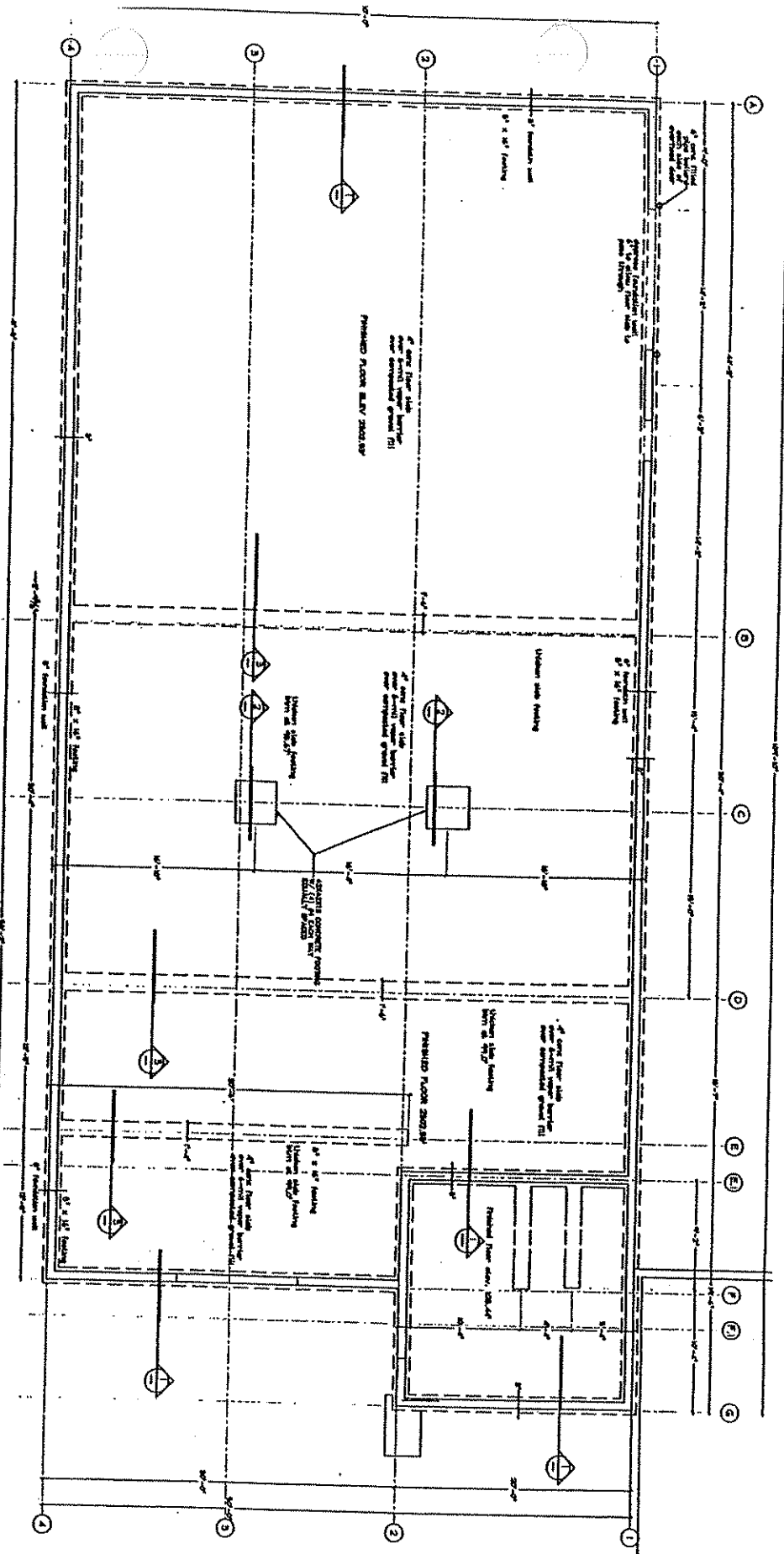
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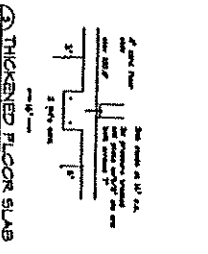
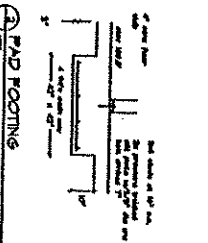
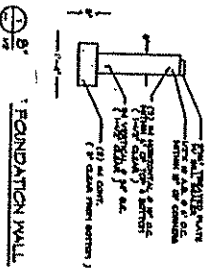
MAIN LEVEL PLUMBING PLAN

Scale: 1/4" = 1'-0"

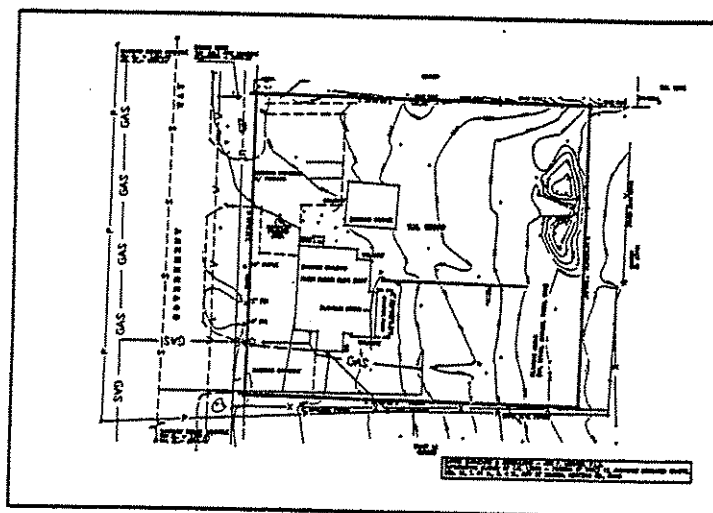




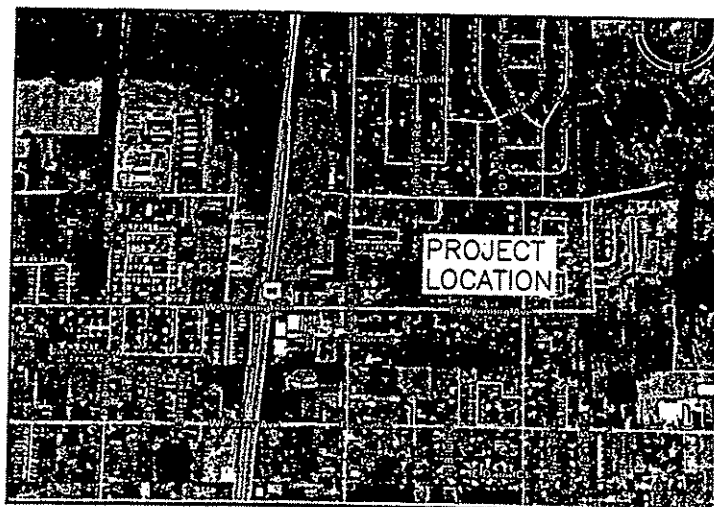
BASMENT/FOUNDATION PLAN



<p>SS SYSTEM TECHNOLOGIES</p> <p>1310 N. GARDENWAY W. LITTLE ROCK, AR 72202</p> <p>Phone: (501) 223-1111 Fax: (501) 223-1112 E-mail: sales@ss-system.com Website: www.ss-system.com</p>		<p>Project No. _____</p> <p>Date _____</p> <p>Drawn By _____</p> <p>Checked By _____</p> <p>Scale _____</p> <p>Sheet Count _____</p>	<p>FOUNDATION PLAN</p> <p>S1.0</p>
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SITE
NTS



VICINITY MAP
NTS

SYSTEM TECHNOLOGIES Plan

11310 N. GOVERNMENT WAY
HAYDEN, ID 83858
KOOTENAI COUNTY

OWNER
SPOKANE STRUCTURES
N. 510 Mullan Rd
Spokane, WA 99206

ENGINEER

**TATE
ENGINEERING INC.**

1103 N. 4th Street Coeur d' Alene Idaho,
83814 (208)678-8708 FAX: (208)667-2129
E-MAIL: rtate@tate-eng.com



NOTE

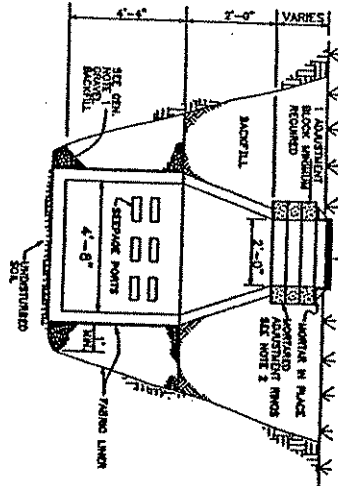


THE LOCATION OF ALL EXISTING UNDERGROUND UTILITIES IS SHOWN IN AN APPROXIMATE WAY ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY HIS FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

CALL 48 HOURS BEFORE YOU DIG
1-800-428-4850

INDEX OF SHEETS

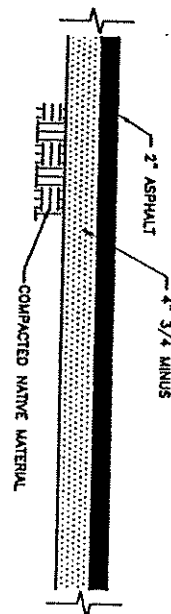
1. TITLE
2. EXISTING SITE
3. PROPOSED SITE
4. DETAILS



- GENERAL NOTES**
1. SPECIAL BLOCK LAYOUT FOR DRYWELLS SHALL CONSIST OF WARDEN PATTERN BLOCKS ONLY. ALL DRYWELLS SHALL BE PASSED THE U.S. No. 200 SCREEN AS REQUIRED BY DESIGN.
 2. SEE STANDARD DRAWING SS-2 FOR FRAME AND COVER DETAIL.

DRYWELL SECTION
NOT TO SCALE

TYPICAL SECTION OF PARKING LOT
NOT TO SCALE



TATE
ENGINEERING
1100 N. 4th Street
Coeur d'Alene
Idaho, 83814
(208) 767-2700
FAX: (208) 767-2125
E-MAIL: tate@tate-eng.com



DATE	
DESIGNED	BY
CHECKED	BY
IN CHARGE	BY

PROJECT: 87.008
DRAWN BY: BMS
DESIGN BY: BMS
CHECK BY: BMS
LAST EDIT DATE: 3/14/07

System Technologies
Hayden, Idaho
Details



[illegible][illegible]

G. AREA	GROSS AREA	DOC TYPE	RATIO	DOC LEAD
existing body	1446	0	1/100	13
new addition	5178			
warehouse group	2350	a=1	1/300	33
5.100.000	2142	0	1/100	30
STREET 5	6670		1/04	63

GENERAL

THE CONTRACTOR SHALL BE GOVERNED BY ALL CONDITIONS AS REQUIRED BY THE CONTRACT AND SPECIFICATIONS AND CODES.

HE BE RESPONSIBLE FOR NOTIFYING ALL AFFECTED AGENCIES IN ADVANCE WITH ALL APPLICABLE CODES.

SHALL PROMPTLY AND HOLD HAZARDOUS WASTE REMEDIATION/DECONTAMINATION PROJECTS TO THE MAXIMUM EXTENT POSSIBLE TO THE CONTRACTOR.

THE CONTRACTOR SHALL MAINTAIN ALL RECORDS OF THE CONTRACT.

EACH CONTRACTOR IS RESPONSIBLE FOR ANY DAMAGE TO ADJACENT PROPERTY AND IS RESPONSIBLE FOR THE REPAIR OF SAID DAMAGE AT HIS OWN EXPENSE.

CODES

ALL WORK SHALL CONFORM TO THE APPLICABLE BUILDING CODES AND SPECIFICATIONS AND ALL CONTRACTS FOR THE CONSTRUCTION OF THE STANDARD OF INSTALLATION OF THE MATERIALS IMPORTED DO NOT EXCEED THE REQUIREMENTS OF THE LAW AND SPECIFICATIONS.

SEE LIST OF AGENCIES AND CODES. NOTIFY THE AFFECTED AGENCIES IN ADVANCE WITH ALL APPLICABLE CODES.

ALL INFORMATION SHOWN ON THE DRAWINGS RELATIVE TO EXISTING CONDITIONS IS GIVEN AS THE BEST PRESENT KNOWLEDGE AND BELIEF OF THE ENGINEER. THE ENGINEER HAS NOT CONDUCTED A FIELD SURVEY OF THE EXISTING CONDITIONS AND CONDITIONS AND SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION SHOWN ON THE DRAWINGS. THE DESIGN PRICER HAS THE DUTY OF VERIFYING THE DESIGN PRIOR TO PROCEEDING WITH THE WORK AFFICED.

MEASUREMENTS ON THE PLANS ARE TIMELY TO THE FRAMES FACE OF PARTITIONS OR TO THE CENTER LINE OF COLUMNS.

DOORS AND CASES OPENING WITHOUT LOCATION CHANGES ARE TO BE AS SHOWN ON THE PLAN. THE LOCATION OF THE DOOR OR CASE SHALL BE AS SHOWN ON THE PLAN. THE LOCATION OF THE DOOR OR CASE SHALL BE AS SHOWN ON THE PLAN.

DOOR CASES THAT ARE NOT MEASURED, FLUSH AND SQUARE WITH THE EXISTING SURFACE OF THE CONCRETE OF A OTHER SURFACE OR ON OR OFF THE SURFACE OF THE CONCRETE.

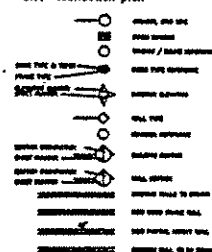
DO NOT SCALE DRAWINGS. THE CONTRACTOR SHALL USE DIMENSIONS SHOWN ON THE DRAWINGS AND ACTUAL FIELD MEASUREMENTS. NOTIFY THE ARCHITECT IMMEDIATELY IN WRITING OF ANY DISCREPANCIES.

APPROXIMATIONS THROUGHOUT THE DRAWINGS ARE APPROXIMATIONS SHOWN AS IS COMMON USE. NO LIST OF APPROXIMATIONS PROVIDED IS NOT INTENDED TO BE COMPLETE REPRESENTATIVE OF CONDITIONS SHOWN AS IS COMMON USE.

[illegible]

DRAWING APPROVAL STATUS		RATE
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<input type="checkbox"/>	FINAL DESIGN APPROVAL	
<input type="checkbox"/>	PRELIMINARY ESTIMATING-BIDDING	
<input type="checkbox"/>	PRELIMINARY DESIGN APPROVAL	

- a1.0 cover sheet and code information
- a2.0 architectural site plan
- a3.0 lower level floor plan
- a3.1 main level floor plan
- a4.0 exterior elevations
- a5.0 building sections
- a5.1 building sections
- a6.0 architectural roof plan
- a9.0 schedules
- mechanical and electrical
- e1.0 lower level floor plan
- e1.1 main level floor plan
- e2.0 electrical schedule
- e3.0 lower level lighting plan
- e3.1 main level lighting plan
- e4.0 exterior lighting plan
- m1.0 lower level floor plan
- m1.1 main level floor plan
- m2.0 mechanical schedule
- plumbing
- p1.0 lower level floor plan
- p1.1 main level floor plan
- structural
- s1.0 foundation plan



SW 1/4 S72, T31N, R4W SW
PARCEL N-0660-12-012-A1

11310 N. GOVERNMENT WY.
MAYDEK, IDAHO 83435

Project mgr.	AL
Drawn	TV
Drawn	
Checked	
Date	11-27-16

A1.0

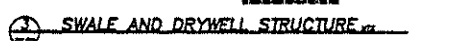
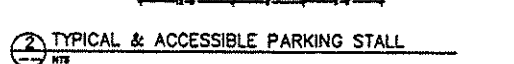
【例题 1】 某企业 2013 年 12 月 31 日应收账款账面余额为 1000 万元，坏账准备余额为 100 万元。2014 年 1 月 1 日，该企业计提坏账准备 100 万元。2014 年 1 月 1 日，该企业计提坏账准备 100 万元。2014 年 1 月 1 日，该企业计提坏账准备 100 万元。

- A. PROVIDE WITH CORNER BUSHES INSIDE ALL SIDES OF OPENING BUSHES EXCEPT OTHER MATERIALS. LEAVE 1/4" GAP FROM WALL FOR SEALANT.
 - B. OPENING BUSHES SHALL TIGHTLY MEET THE WALLS OF THE JOINT. OPENING BUSHES TO A HEIGHT OF 4'-6" FROM FLOOR AND LEAVE A 2" GAP BETWEEN BUSHES ON EACH SIDE OF THE FLOORING.
 - C. WELD AND GRIND SMOOTH ALL STEEL PIPE WELDING, CENTER.
 - D. ALL WELD BUSHES SHALL HAVE LEAKAGE CHECKING DEVICES.
- WATERBARS AND SUBPARTITIONS:**
- A. THE CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL REPLACE OR REPAIR ANY FAILURE, IMPROPER OR DEFECTIVE MATERIALS OF SUBPARTITION BUSHES SHALL APPEAR WITHIN ONE (1) YEAR AFTER THE COMPLETION OF THE PROJECT.
 - B. SUBPARTITION CONTRACTOR IS RESPONSIBLE FOR PROVIDING ALL NUTS OR BUSHES EXCEPTED IN WORK DONE BY OTHERS ON ANY OTHER TRADE OR CONTRACTOR.
- MATERIALS AND SUBPARTITIONS:**
- A. THE CONTRACTOR SHALL VERIFY LOCATIONS OF ALL EQUIPMENT AND COORDINATE LOCATIONS OF FLOOR BUSHES, FLOOR DRAIN, ELECTRICAL, ELECTRONIC, AND PLUMBING SUBPARTITIONS, AND ALL OTHER WORK WITHIN THE SCOPE OF RESPONSIBILITIES RELATIVE TO THIS EQUIPMENT.
 - B. PIPES AND DUCTS EXCEEDING ONE THIRD THE SLAB OR WALL THICKNESS SHALL NOT BE PLACED IN STRUCTURAL CONCRETE. PROVIDE PROTECTIVE COATINGS. THE CONTRACTOR SHALL PROVIDE FOR ELECTRICAL BUSHINGS FOR LOCATION OF SERVICES, ACCESSORIES, ETC.
 - C. ALL ELECTRIC, MECHANICAL, AND PLUMBING BUSHES SHALL CONFORM TO THE REQUIREMENTS OF FIP 300, ASIE AND FIP 300, RESPECTIVELY.
 - D. CONTRACTOR SHALL PROVIDE PROTECTIVE COATINGS AT ALL SUBPARTITION, PANELS AND COVERS, MECHANICAL, ELECTRICAL, ELECTRONIC BUSHES AND ALL COVERS, BUSHES.
 - E. MECHANICAL, PLUMBING AND ELECTRICAL FLUES, WHEN POINT SUBPARTITIONING, ARE INTENDED TO REDUCATE DRAFTS, SEAL, LEAKAGE AND PROVIDE AIRFLOW.
 - F. SEVERAL CONTRACTORS SHALL PROVIDE PROTECTIVE COATINGS IN WALLS AND SLABS AS REQUIRED FOR MECHANICAL, ELECTRICAL, ETC.
 - G. MECHANICAL CONTRACTORS SHALL HAVE ALL EQUIPMENT IN SLAB BUSHES AND BUSHES SHALL AROUND DUCTS, PIPES, VENTS, GAS PIPES, GAS SERVICE COVERS, STRUCTURAL, ETC.
 - H. ALL EXTERIOR WALL PENETRATIONS SHALL BE CHECKED WITH AN APPROVED WEATHER-TIGHT CHALLENGE COMPONENT.
 - I. THE GENERAL CONTRACTOR SHALL PROVIDE TEMPORARY SEALING AS REQUIRED.

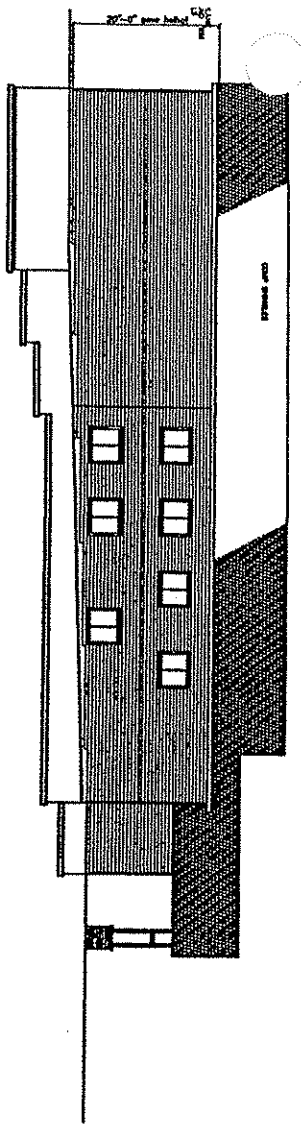
Figure 1

- Figure 6**

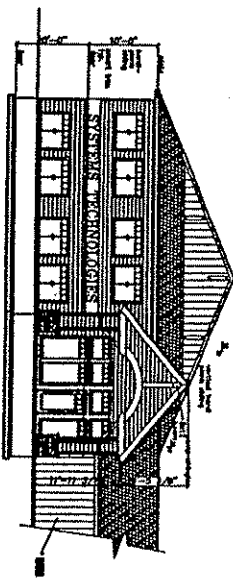
2008 年 12 月 26 日 星期五



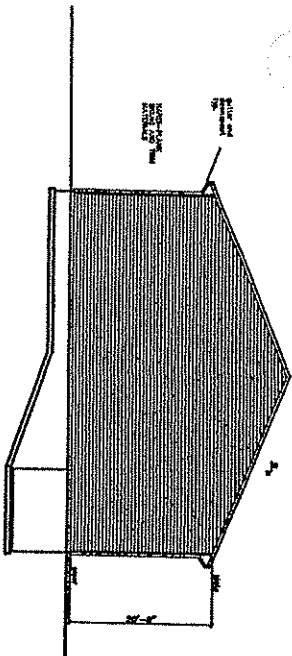
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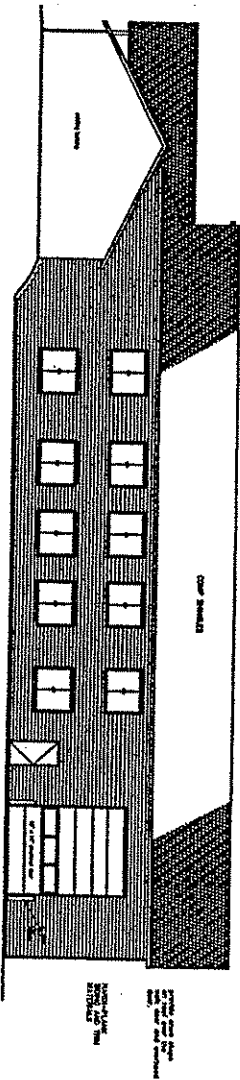
North elevation



West elevation



East elevation



South elevation

By	Revision	Date
CR	1	10-10-01
CR	2	10-10-01
CR	3	10-10-01
CR	4	10-10-01
CR	5	10-10-01
CR	6	10-10-01
CR	7	10-10-01
CR	8	10-10-01
CR	9	10-10-01
CR	10	10-10-01



SYSTEMS TECHNOLOGIES
618 HORTHILLMAN
FARM ROAD, N.W.
FARMINGTON, CT 06031
TEL: 860-377-1000
FAX: 860-377-1001

Project:
SYSTEM
TECHNOLOGIES

38 1/2 S2, 25K, 40K, 45K
11310 N. GOVERNMENT HWY.
HAYDEN, IDAHO 83835
Project No.: 10-10-01
Client: S&S
Owner: S&S
Designer: S&S
Date: 10-10-01

Sheet Details:
EXTERIOR
ELEVATIONS

Sheet No.:

A4.0

Project No.:



Date	Revision	By
11-22-08	INTERNAL REVIEW	NLS
10-19-08	INTERNAL REVIEW	NLS
10-08-08	INTERNAL REVIEW	NLS
09-22-08	INTERNAL <u>CLERK</u> REVIEW	NLS



SPECIALTY SYSTEMS, INC.
610 NORTH HALLAM RD
SPOKANE, WA
PH 808.977.2025
FX 808.977.4032

**SYSTEM
TECHNOLOGIES**

STW 1/4 S12, T51N, R4W BM
PARCEL N-0600-12-012-AD
12310 N. CONDEMNANT RT;
HAYDEN, IDAHO 83835

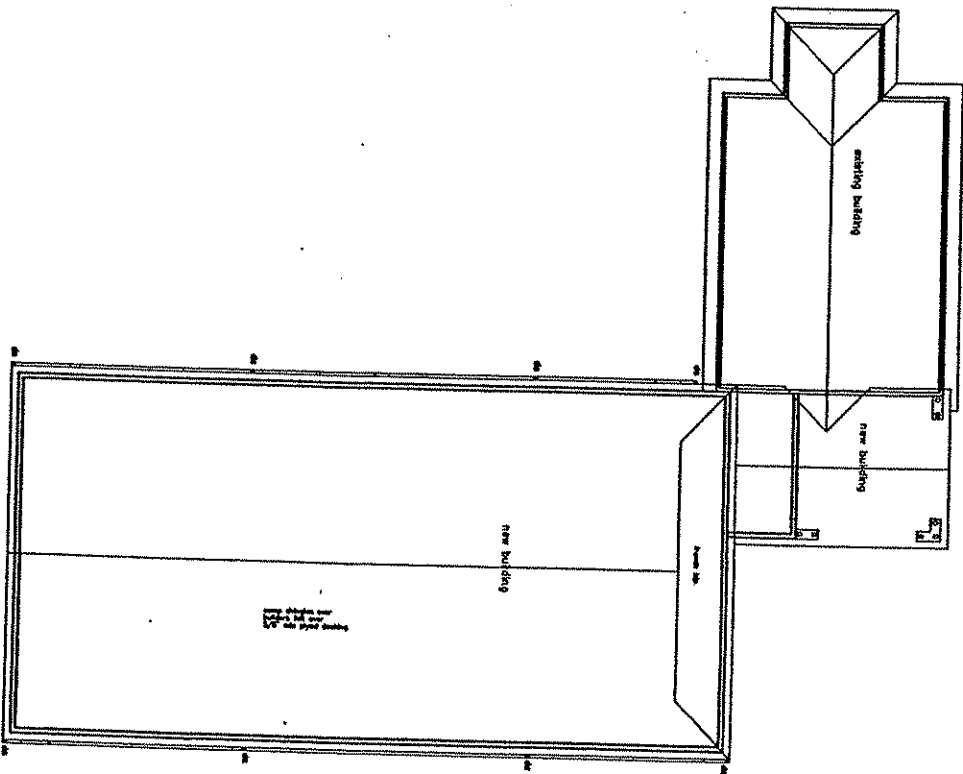
Species	Sex
Brown	♂
Green	
Cherry	
Delta	11-12-18

**BUILDING SECTIONS
A-A AND B-B**

Diagram illustrating a roof truss system with the following labeled components:

- Comp. shingles over**
- 3/8" x 6" steel joist over**
- 3/8" x 6" cold rolled decking**
- 2x6 slats at 18" o.c. w/-19 bolt insulation**
- 11 7/8" rim joist**
- 3/4" lag pined web flooring**
- 3/8" x 6" gus cabling**
- pre-lifted wood beams at 24" o.c. lps**
- r-18 bolt insulation**
- 12** (vertical dimension)
- 5** (horizontal dimension)
- 11 7/8" 1/2 plate at 18" o.c.**
- g^s vent floor also f^s at 18" o.c. each way**
- 1'-0" x 3'-0"** (dimension)
- 2'-0"** (dimension)
- 2'-0"** (dimension)

~~building section c-c~~
~~notes: 1/4" = 1'-0"~~



architectural roof plan



Date	Revision	By
11-11-18	1	TK
11-11-18	2	TK
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11-11-18	98	TK
11-11-18	99	TK
11-11-18	100	TK



STRONG SYSTEMS, INC.
80 HORTON ROAD
BROOKLYN, NY 11203
TEL: 718/337-7000
FAX: 718/337-7002

STRONG SYSTEMS, INC.
SYSTEM TECHNOLOGIES

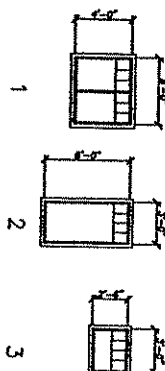
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PROJECT: 11-11-18
DRAWN: 11-11-18
CHECKED: 11-11-18
APPROVED: 11-11-18

DATE: 11-11-18
PROJECT: 11-11-18
DRAWN: 11-11-18
CHECKED: 11-11-18
APPROVED: 11-11-18

ROOF PLAN

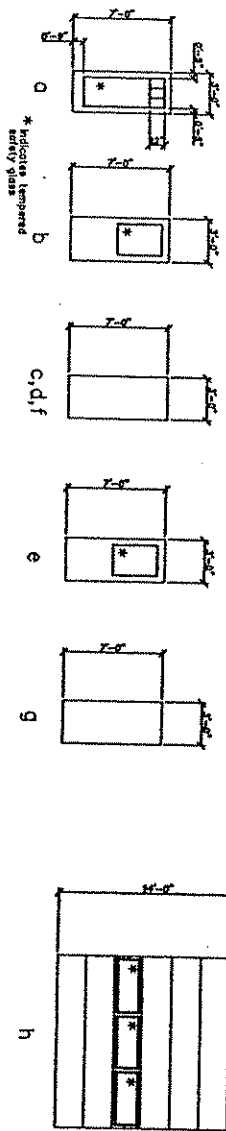
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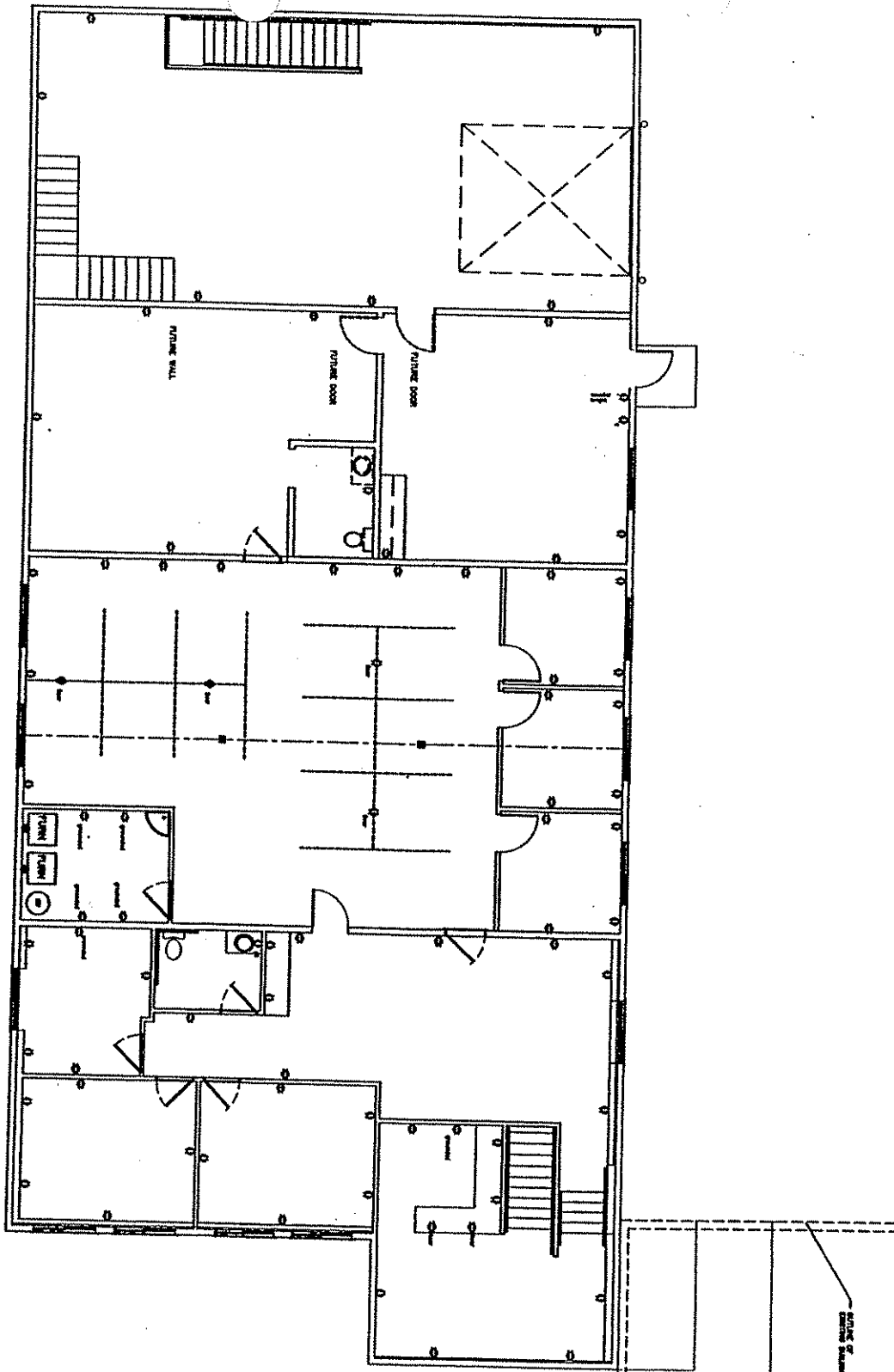
MIDWINTER SURVEILLANCE		DATE		PAGE	
NO.	NAME	AGE	SEX	DATE	PAGE
1
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99
100

[illegible]

door schedule notes:

1. all exit doors to be operable without and special knowledge or key.
2. all door hardware to be maximum commercial grade with lever style handle.
3. all wood doors to be solid core if built doors slotted and lagwood
4. all door hardware to be with finish brushed aluminum





Lower level power plan

Scale 1/8" = 1'-0"



EXISTING OF EXISTING BUILDING

By	Position	Date
02/02/02	INTERNAL REVIEW	02-22-02
02/02/02	INTERNAL REVIEW	02-22-02
02/02/02	INTERNAL REVIEW	02-22-02
02/02/02	INTERNAL REVIEW	02-22-02
02/02/02	INTERNAL REVIEW	02-22-02



SYSTEMS TECHNOLOGIES, INC.
311 HUNTINGTON
BIRMINGHAM, AL 35203
205.975.1234
FAX 205.975.1235

SYSTEM
TECHNOLOGIES

311 1/4 S.W. 20th Ave. #400 P.O. Box 111111 Atlanta, GA 30301-1111	Project No.	11-27-02
11110 N. GOWAN ST. WY ATLANTA, GA 30301-1111	Project Name	11-27-02
Project No.	Project Name	11-27-02
Project No.	Project Name	11-27-02
Project No.	Project Name	11-27-02

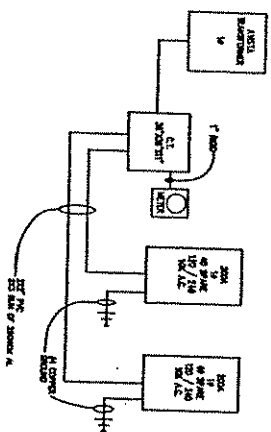
LOWER LEVEL
FLOOR PLAN

E1.0



PART 12
PART 13
PART 14
PART 15
PART 16
PART 17
PART 18

PANEL B SCHEDULE



PANEL DIAGRAM



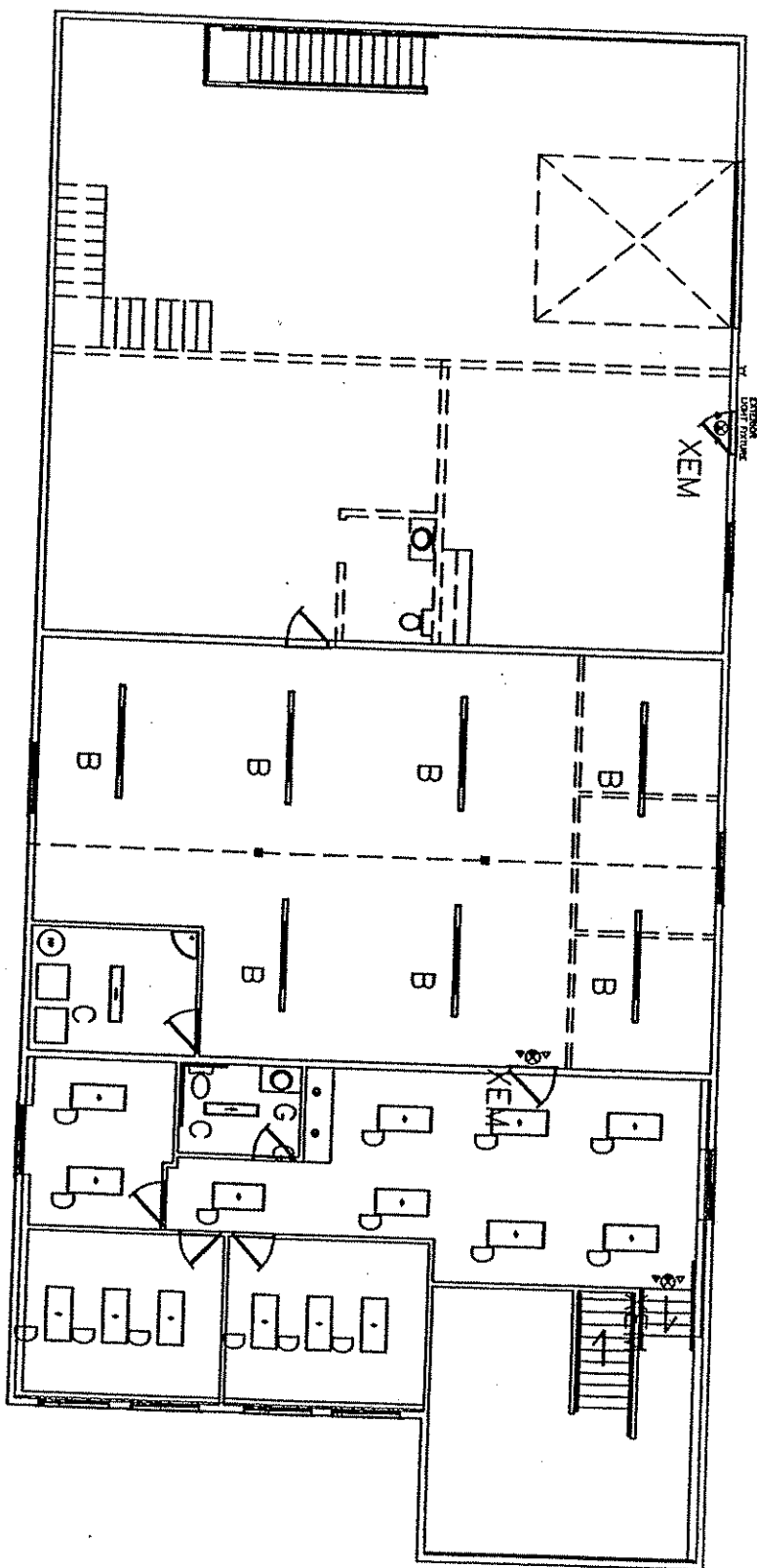
819 NORTH HILLWAY RD
SPOKANE, WA
PH 808.827.5086
FX 808.877.4052

ANALYZE
SYSTEM
TECHNOLOGIES

1310 N. GOVERNMENT HT.,
GARDEN PLAZA BLDG
DALLAS 14 TEXAS

Project No.	Ac.
2000	72
2001	
2002	
2003	11-27-18

ELECTRICAL MEDICINES



XEM

EXTERIOR LIGHT FIXTURE

Room	Notes
10-22	INTERNAL CLIENT REVIEW
10-23	INTERNAL REVIEW
10-24	INTERNAL REVIEW
10-25	INTERNAL REVIEW
10-26	INTERNAL REVIEW
10-27	INTERNAL REVIEW
10-28	INTERNAL REVIEW
10-29	INTERNAL REVIEW
10-30	INTERNAL REVIEW
10-31	INTERNAL REVIEW
10-32	INTERNAL REVIEW
10-33	INTERNAL REVIEW
10-34	INTERNAL REVIEW
10-35	INTERNAL REVIEW
10-36	INTERNAL REVIEW
10-37	INTERNAL REVIEW
10-38	INTERNAL REVIEW
10-39	INTERNAL REVIEW
10-40	INTERNAL REVIEW
10-41	INTERNAL REVIEW
10-42	INTERNAL REVIEW
10-43	INTERNAL REVIEW
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10-92	INTERNAL REVIEW
10-93	INTERNAL REVIEW
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10-96	INTERNAL REVIEW
10-97	INTERNAL REVIEW
10-98	INTERNAL REVIEW
10-99	INTERNAL REVIEW
10-100	INTERNAL REVIEW



SYSTEM TECHNOLOGIES
610 HORTON AVENUE
SPRING, VA 22151
PH: 703/277-7000
FAX: 703/277-7001

DATE: 11-27-18
DRAWN: JZ
CHECKED: JZ
DATE: 11-27-18

LOWER LEVEL
LIGHTING



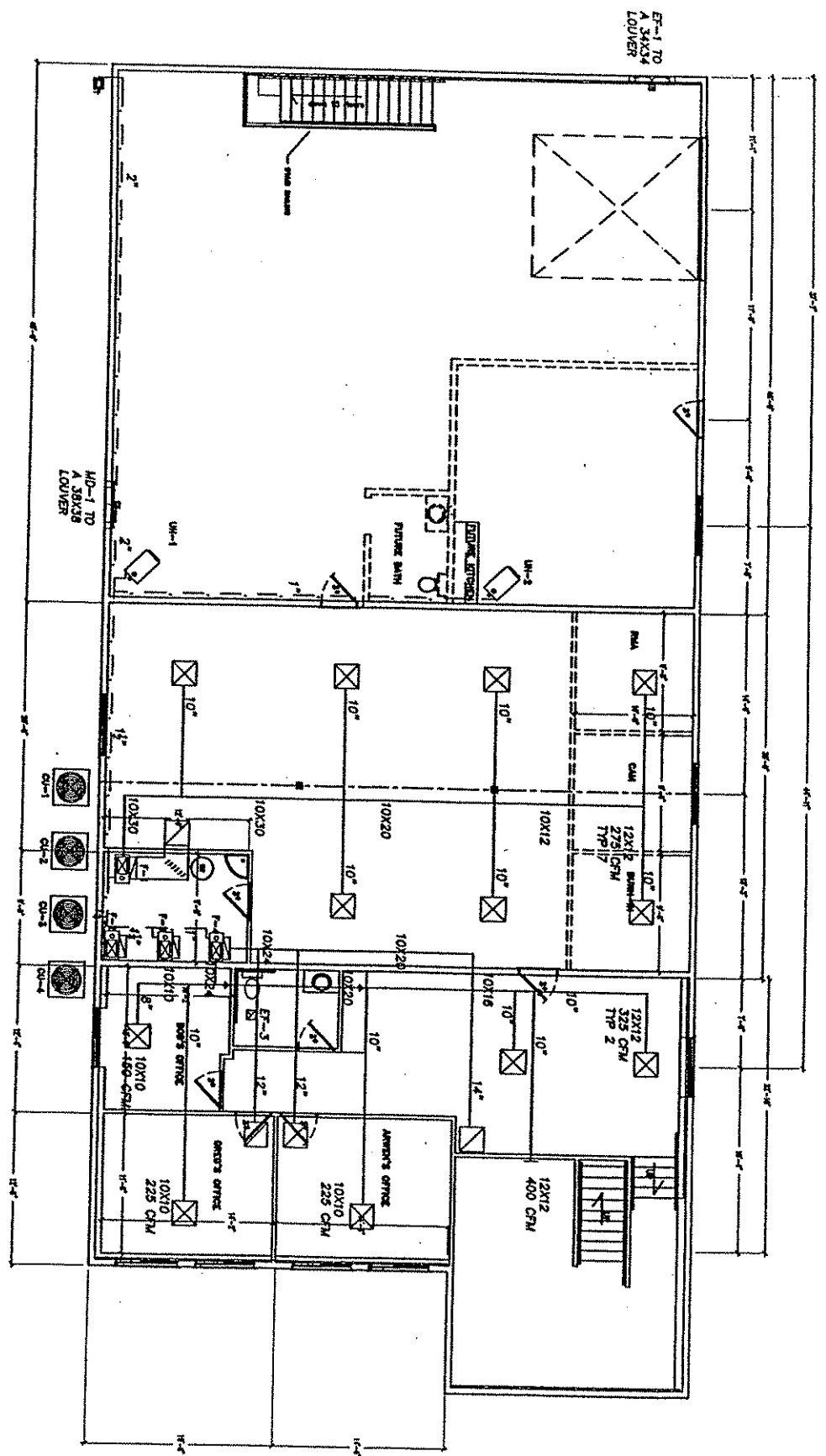
STOCKADE STEELTIMBER, INC.
419 NORTH HALLAND
SPOKANE, WA
PH 808.827.0000
FX 808.827.0002

Project:
SYSTEM
TECHNOLOGIES

SW 1/4 S12, T25N, R27W MD	
PARCEL N-0400-18-012-AC	
11310 N. GOVERNMENT WY.	
NATRON, DAVID ALSS	
Payable to:	R.
Drawn	T2
Drawn	
Checked	
Date	11-27-18

LOWER LEVEL
MECHANICAL

Sheet No. 2
Project No. 1



lower level floor plan

Rev	Description	Date
1	INTERNAL REVIEW	11-27-18
2	INTERNAL REVIEW	11-27-18
3	INTERNAL REVIEW	11-27-18
4	INTERNAL REVIEW	11-27-18
5	INTERNAL REVIEW	11-27-18
6	INTERNAL REVIEW	11-27-18
7	INTERNAL REVIEW	11-27-18
8	INTERNAL REVIEW	11-27-18
9	INTERNAL REVIEW	11-27-18
10	INTERNAL REVIEW	11-27-18

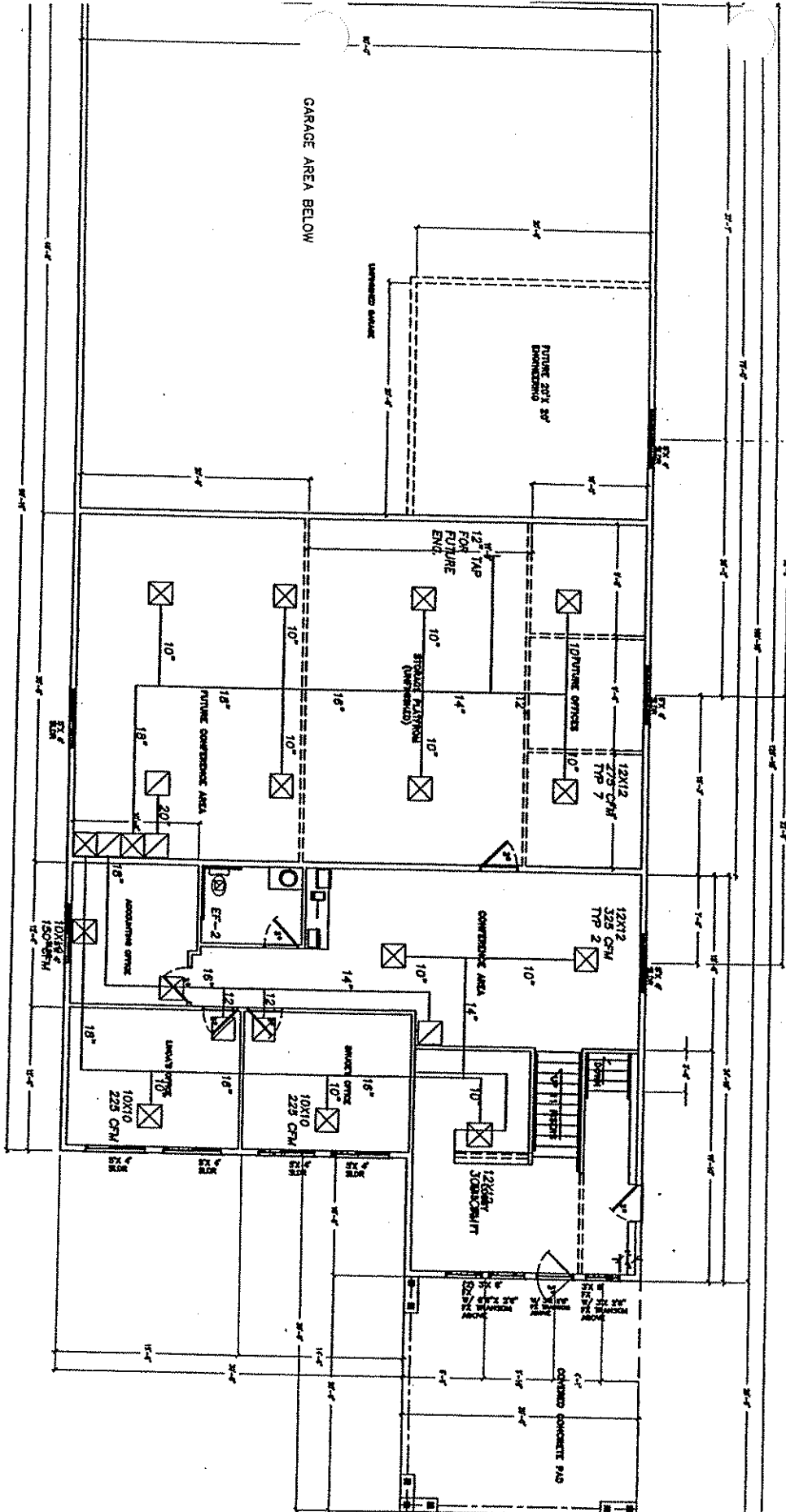


SPRINGER STREETWORKS, INC.
610 SPENCER HILL ROAD
SPRINGFIELD, MA 01104
TEL: 413.272.2000
FAX: 413.272.2005

PROJECT
SYSTEM
TECHNOLOGIES

BY: J. A. SIZ, P.E., RAS, MA
PROJECT: H-000-12-01-A-C
1110 N. GOVERNMENT ST.
MILFORD, MA 01833
PROJECT NO.: 11-27-18
DATE: 11-27-18

MAIN LEVEL
MECHANICAL



main level floor plan

MECHANICAL SCHEDULE									
ITEM	DESCRIPTION	UNIT	QTY	PRICE	TOTAL	DATE	BY	CHKD	APPD
1-1	1/2" DIA. STEEL PIPE	LF	100	1.50	150.00	11-27-18	JS	JS	JS
1-2	1/2" DIA. STEEL PIPE	LF	100	1.50	150.00	11-27-18	JS	JS	JS
1-3	1/2" DIA. STEEL PIPE	LF	100	1.50	150.00	11-27-18	JS	JS	JS
1-4	1/2" DIA. STEEL PIPE	LF	100	1.50	150.00	11-27-18	JS	JS	JS
1-5	1/2" DIA. STEEL PIPE	LF	100	1.50	150.00	11-27-18	JS	JS	JS
1-6	1/2" DIA. STEEL PIPE	LF	100	1.50	150.00	11-27-18	JS	JS	JS
1-7	1/2" DIA. STEEL PIPE	LF	100	1.50	150.00	11-27-18	JS	JS	JS
1-8	1/2" DIA. STEEL PIPE	LF	100	1.50	150.00	11-27-18	JS	JS	JS
1-9	1/2" DIA. STEEL PIPE	LF	100	1.50	150.00	11-27-18	JS	JS	JS
1-10	1/2" DIA. STEEL PIPE	LF	100	1.50	150.00	11-27-18	JS	JS	JS

- NOTES
- 1) ALL AIR PIPING AND DUCT SYSTEMS SHALL HAVE AUTOMATICALLY CLOSING DAMPERS
 - 2) ALL AIRPICKS TO BE INSTALLED FOR EACH UNIT 14-4
 - 3) DAMPERS TO BE 2" DIA. MINIMUM
 - 4) DAMPERS TO BE 2" DIA. MINIMUM
 - 5) DAMPERS TO BE 2" DIA. MINIMUM
 - 6) DAMPERS TO BE 2" DIA. MINIMUM
 - 7) DAMPERS TO BE 2" DIA. MINIMUM
 - 8) DAMPERS TO BE 2" DIA. MINIMUM
 - 9) DAMPERS TO BE 2" DIA. MINIMUM
 - 10) DAMPERS TO BE 2" DIA. MINIMUM

SS

SYSTEMS
TECHNOLOGIES

410 NORTH MAIN ST.
PO BOX 1000
ROCKFORD, IL 61101

MECHANICAL
SCHEDULE

DATE	BY	CHKD	APPD
11-27-18	JS	JS	JS
11-27-18	JS	JS	JS
11-27-18	JS	JS	JS
11-27-18	JS	JS	JS

M2.0

Date	Revision	By
11-25-04	INTERNAL REVIEW	TKJ
10-19-08	INTERNAL REVIEW	TKJ
10-08-08	INTERNAL REVIEW	TKJ
9-21-08	INTERNAL CLIENT REVIEW	TKJ

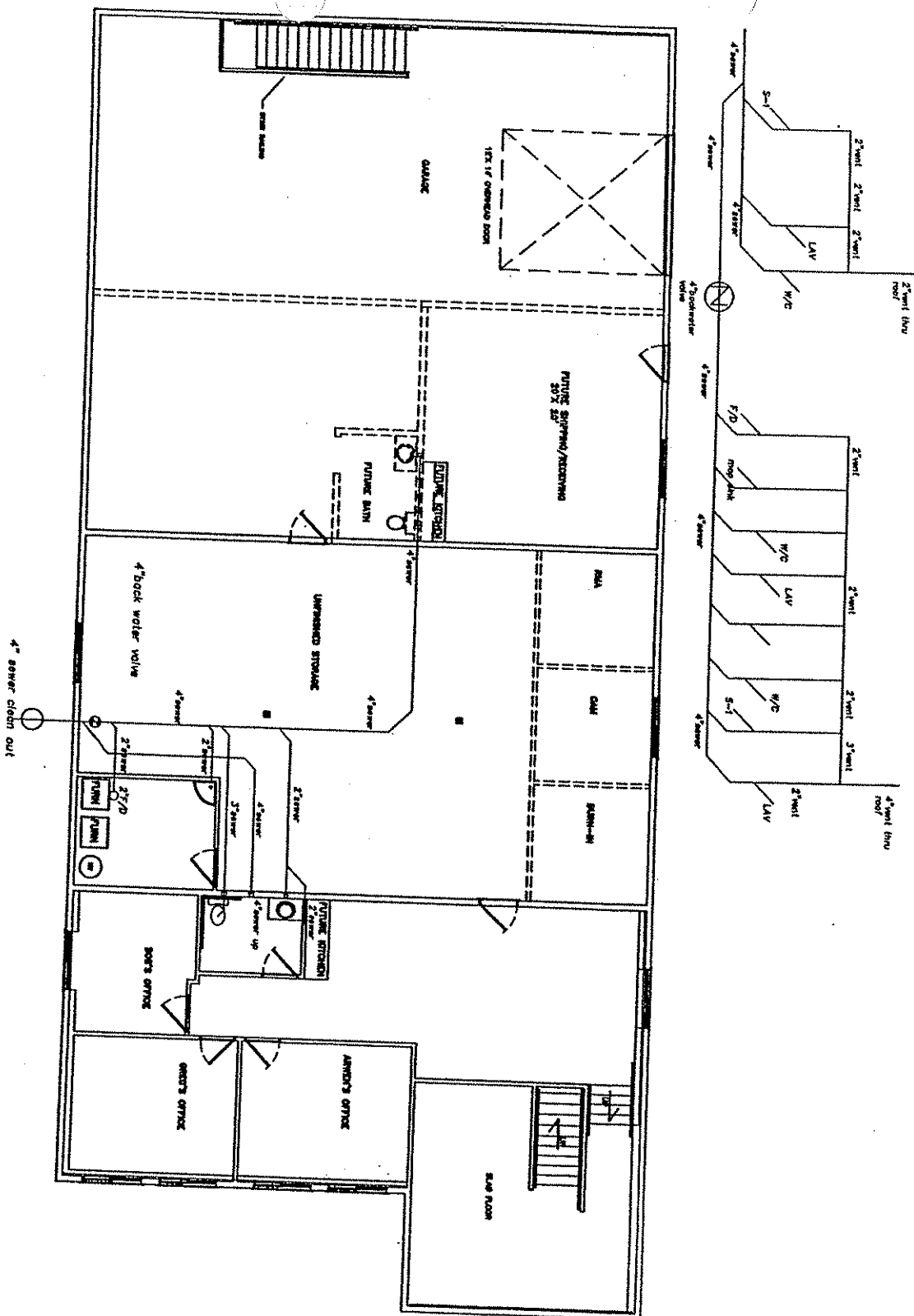


SPECIALTIES STEELWORK, INC.
510 NORTH MILLAN RD
BROWNS, WA
PH 206/827-0955
FX 809/827-4032

Project
SYSTEM
TECHNOLOGIES

SW 1/4 S12, T5N, R4W AND PARTS N-0400-12-012-4-12	11310 N. GOVERNMENT ST. MAYBEN, IDAHO 83403	Project type:	RL
		Down:	75
		Down:	
		Overhead:	
		Date:	11-27-18

LOWER LEVEL
FLOOR PLAN



lower level floor plan



Thanks for sending these. The Hardiboard (siding and shingles) look great. The building was a little plain jane for my tastes but I'm sure it's what they wanted. This did bring up some questions however:

- I think you mentioned the color they used is a stock color - I think we have a sample of it. Would we have much savings if we went with a stock color instead of painting the building?
- Do you have an approximate cost for the RF clean room? We have another idea that may be cheaper - drop a 10' culvert into the back yard and cover it with five feet of dirt.
- I forgot to add under eave lighting to match (more or less) what we did on the existing building. Also, I wanted lights pointing up on each entry pillar in the front. Would those be low voltage and part of the landscaping or is it something that needs outlets?
- All exterior lights should be wired on common circuit for a timer so they can turn on and off automatically. I'm not sure if that's how it normally works so I thought I had better add it to my list.

I know we've been adding to the overall project and we do have to live within a budget since we have to sign for the loan first week in February. Since interest rates have risen since we were approved we don't want to go through the process for more money and get a higher rate - hence my questions to get an idea where we can economize if we need to.

Thanks again!

Linda

— Original Message —

From: RLewis2664@aol.com

To: Linda@systemstechnologiesusa.com

Sent: Monday, January 22, 2007 4:48 PM

Subject: (no subject)

LINDA

I STOPPED BY TO TAKE THESE. MAYBE IT WILL SAVE YOU A TRIP.

ROB



Sunday, Jan



ewis2664

143



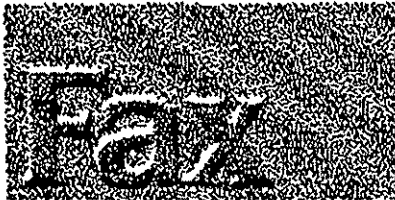
Systemstechnologies

8886 N. Government Way

Hayden, ID 83835

Phone: 208-762-6800

Fax: 208-762-4877



Date: Thursday, February 22, 2007

To: SPOKANE STRUCTURES

Rob Lewis

Phone: 509-927-0655

Fax: 509-927-4062

From: Linda

Pages: 2

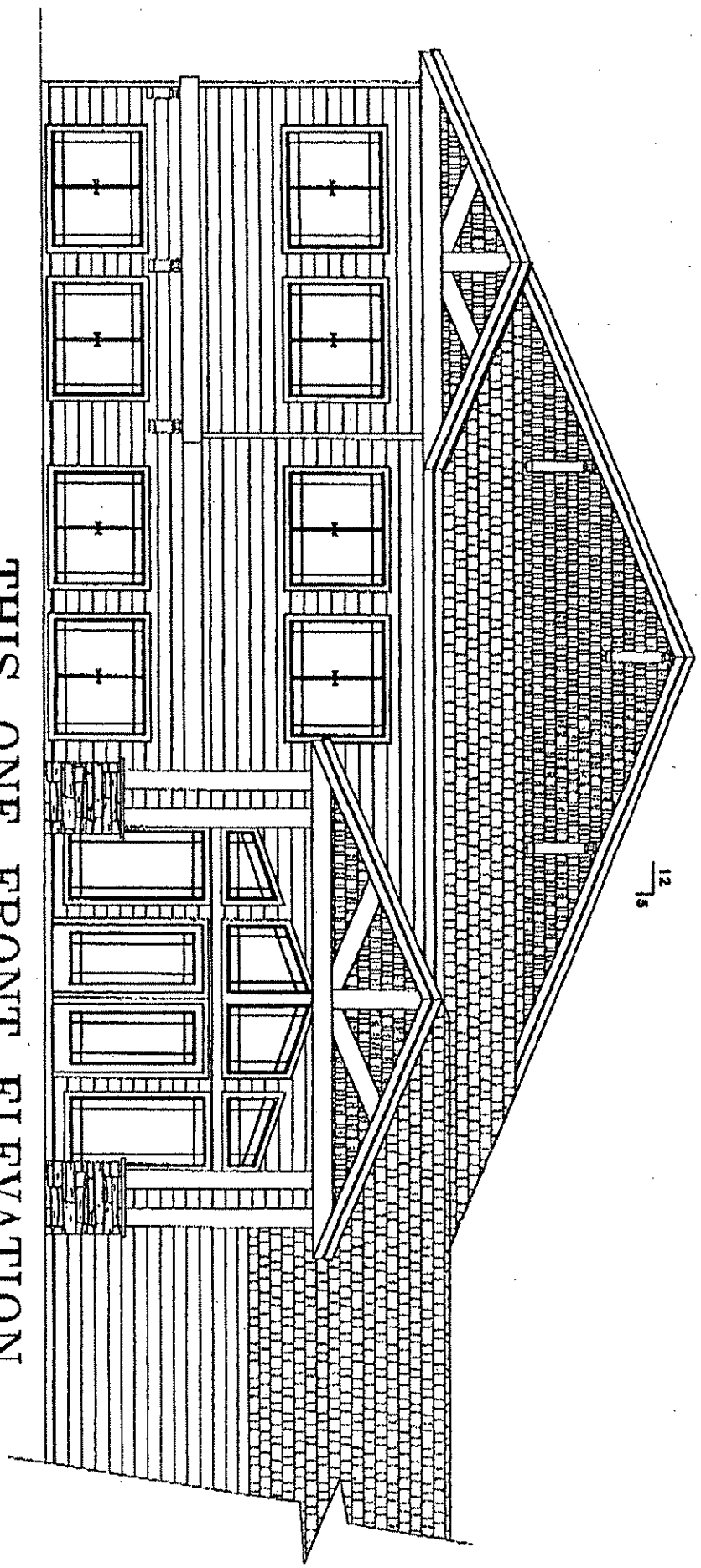
Subject: Building exterior design

Rob, here is the revised exterior building design. We added a cantilevered area to break up the "warehousey" look of the main building. I will be getting a CAD file with this in it later today. There are Hardiboard shakes above each "arch" including above the roof hip. There is also a belly band around the entire building to break up the "upper" and "lower" colors on the horizontal Hardiboard.

Call me with any questions. We're ready to rock and roll!



THIS ONE FRONT ELEVATION



12
15



March 30, 2007

Dear Linda,

I had the electrician and the heating and air conditioning subs look at the plans and give us the credits that we ask for.

The electrician will not install the 15 light fixtures in the upper and lower space, will not hook up two furnaces and air conditioning units, and not install the outlets in the unfinished spaces. They will also not be installing the generator circuits at this time. The credit for this is \$5,103.00.

The heating and air conditioning sub-contractor will eliminate two of the furnaces and air conditioners and the unit heaters in the garage. The ductwork for the future expansion will be in place. The credit for this is \$8,000.00.

Please understand that we are trying to get this project into your budget, but there will be items that the building dept. comes up with that could affect the price. I don't expect any large issues, but there is always that chance and I want to make sure that we are on the page.

As we talked about the other day, you wanted a contractor that would work with you on the changes. Someone that you could trust to work with and you not take advantage of change orders. What we can do is the changes we make will be done by change order and I will bill them out at cost plus 15% which is 5% below what I usually do. This should ease your mind about the change that we might make after we get under construction.

I will have complete sets of plans to you this afternoon.

Rob





Subj: **Re: (no subject)**
Date: 3/30/2007 9:33:30 A.M. Pacific Daylight Time
From: Linda@systemstechnologiesusa.com
To: RLewis2664@aol.com

Thanks, Rob. I think the cost savings are likely to be better once you have the quotes in from Kimball Electric and Advanced Heating. Did you get anything back yet from Ken Bettis and the demolition contractor?

See you this afternoon.

Linda

— Original Message —

From: RLewis2664@aol.com
To: Linda@systemstechnologiesusa.com
Sent: Friday, March 30, 2007 6:02 AM
Subject: (no subject)

See what's free at AOL.com.





Subj: **Re: Building Project**
Date: 4/5/2007 7:17:10 P.M. Pacific Daylight Time
From: RLewis2664
To: Linda@systemstechnologiesusa.com

Linda

I have recieved the bid from Bettis. He was \$7000 higher than my other bids. I have not recieved the others yet, I was supposed to get Kimball today and Advanced tomorrow. I will be in touch on Friday.

Rob

—Original Message—

From: Linda@systemstechnologiesusa.com
To: RLewis2664@aol.com
Sent: Thu, 5 Apr 2007 6:06 PM
Subject: Building Project

We haven't signed the papers for the loan yet as I was still waiting for you to re-quote once you received the revised bids from your subcontractors and from Kimball Electric, Advanced Heating and Bettis Excavating.

Thanks, Rob!

Linda Paris
Systemstechnologies
8886 N. Government Way
Hayden, ID 83835
Phone: 1-888-826-3394 Ext. 101
Fax: 208-762-4877
E-mail: linda@systemstechnologiesusa.com
Website: www.wirelessnursecall.com

AOL now offers free email to everyone. Find out more about what's free from AOL at AOL.com.
=0



Subj: **Fw: Building Project**
Date: 4/10/2007 3:38:19 P.M. Pacific Daylight Time
From: Linda@systemstechnologiesusa.com
To: RLewis2664@aol.com

Just to recap, we aren't ready to authorize building permits or obtain bank financing until we have a signed contract. Before we can sign a contract we need a final price which should reflect the reductions for the removal of one firewall, the 20' x 50' second story, and all lumber, framing, HVAC, and other costs associated with this change. We will be additionally be writing up a document clarifying what we think is included in your price to ensure we are both on the same page and to eliminate any confusion as we move forward.

Thanks, Rob!

Linda

— Original Message —

From: <rlewis2664@aol.com>
To: <Linda@systemstechnologiesusa.com>
Sent: Thursday, April 05, 2007 7:17 PM
Subject: Re: Building Project

Linda

I have recieved the bid from Bettis. He was \$7000 higher than my other bids. I have not recieved the others yet, I was supposed to get Kimball today and Advanced tomorrow. I will be in touch on Friday.

Rob





Subj: **Re: Fw: Building Project**
Date: 4/10/2007 5:56:46 P.M. Pacific Daylight Time
From: RLewis2664
To: Linda@systemstechnologiesusa.com

Linda

I have already started the process with the city for the permit as I told you earlier today. We do not have to pay for the permit until the review is done. I thought I was helping the process along. I have everything except the bid from Advanced and they told us today that we would have it by Friday. I will review it and modify the contract accordingly.

I am in agreement the we will have a document to lay out the revisions that we have done. Good business for both of us. The changes that I have made are as follows:

- Eliminated partition wall and floor system at rear of building
- Eliminated all HVAC except in the finished office areas
- Eliminated all lighting in unfinished areas (except per code)
- Enlarged parking lot to accommodate needed parking
- Include siding the meat house (we will have to pay the sewer hookup fee)

I am trying to make sure that there are as few as possible changes after we get started as possible. I know that this is what you are trying to do also.

I'll be in touch as soon as I hear from Advanced.

Rob

See what's free at AOL.com.





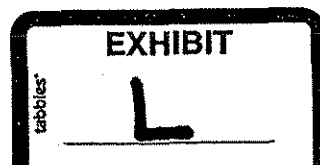
Subj: (no subject)
Date: 4/15/2007 6:17:42 P.M. Pacific Daylight Time
From: RLewis2664
To: Linda@systemstechnologiesusa.com

Linda

I recieved the bid from Advanced Friday, too late to get to you. I have made all the adjustments that are described in my e-mail of 4/10. The new price is \$612,734.00. I will call you Monday afternoon to discuss.

Rob

TEMPORARILY TO DISCUSS: ADVANCED TECHNOLOGIES USA, INC. IS A COMPANY THAT PROVIDES SOFTWARE AND SERVICES TO THE CONSTRUCTION INDUSTRY. ADVANCED TECHNOLOGIES USA, INC. IS A COMPANY THAT PROVIDES SOFTWARE AND SERVICES TO THE CONSTRUCTION INDUSTRY.
AOL now offers free email to everyone. Find out more about what's free from AOL at AOL.com.





April 18, 2007

Dear Linda and Bruce,

I received the letter from your attorney this morning. I guess that explains why you have been avoiding me! I was shocked to say the least and I am hoping that we can talk this out and resume our relationship. We have gone to great lengths to design and re-design, price and re-price the building to give you what you want at a price you can afford.

We have had numerous conversations about the price and about the recent bill you received. It was not a demand for payment as your attorney claims. I knew that the money would not be available to you until the contract was to the bank. We discussed that last week. The billing you received was an every day process that goes on in my bookkeeping that we do at the beginning of the month. We have incurred expenses in getting to the stage that we are at and they are no different than on your spreadsheet. As I told you before, I did not expect payment until you received your loan proceeds.

So, again, I ask you to reconsider your position. I assure you that if this ends up in the attorney's hands, no one will win but them!

Sincerely,
Rob Lewis



STATE OF IDAHO
COUNTY OF KOOTENAI } ss
FILED:

2008 FEB 27 PM 4:36

CLERK DISTRICT COURT

DEPUTY

Steven C. Wetzel, ISB #2988
Kevin P. Holt, ISB #7196
WETZEL, WETZEL, BREDESON & HOLT, PLLC
1322 Kathleen Ave., Suite 2
Coeur d'Alene, Idaho 83815-8339
Telephone: (208) 667-3400
Facsimile: (208) 664-6741

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMSTECHNOLOGIES,

Defendant.

Case No. CV-07-4062

AFFIDAVIT OF KEVIN P. HOLT IN
SUPPORT OF PLAINTIFF'S
MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT

STATE OF IDAHO)
) ss.
County of Kootenai)

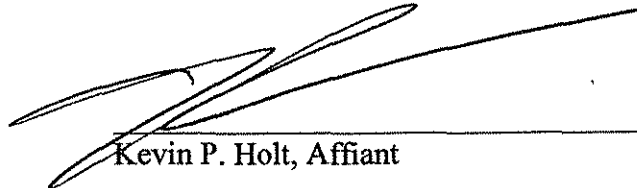
I, Kevin P. Holt, after first being duly sworn, depose and say:

1. I am one of the attorneys for Spokane Structures, Inc., the plaintiff in the present case, and make this Affidavit based upon my personal knowledge.

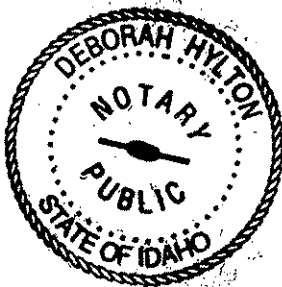
161


2. Attached to this Affidavit are true and correct copies of pages 1, 29, 31, 34, 58, 97, and 98 of the transcript of the deposition of Linda Tomblin, taken on November 8, 2007.

3. Attached to this Affidavit are true and correct copies of pages 1, 5, 6, 17, 18, 19, 20, 31, 32, 41, and 42 of the transcript of the deposition of Bart Kleng, taken on November 13, 2007.


Kevin P. Holt, Affiant

Subscribed and sworn to before me this 27 day of February, 2008.

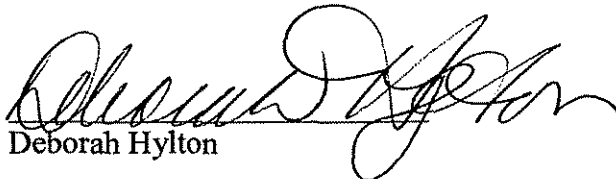



Notary for the State of Idaho
Commission Expires: 10-16-2012

CERTIFICATE OF DELIVERY

I hereby certify that on the 27 day of February, 2008, I served the foregoing document upon:

<input checked="checked" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="checked" type="checkbox"/> Facsimile: 664-6338	PATRICK E. MILER AMY C. BISTINE PAINE HAMBLÉN LLP 701 E Front Avenue, Suite 101 P.O. Box E Coeur d'Alene, ID 83816-2530 <i>Attorneys for Defendant</i>
---	--


Deborah Hylton

s:\files\s\spokane structures, inc\pleadings\defendant motion for summary judgment\affidavit of kevin p. holt with deposition pages.doc

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs. Case No. CV-07-4062

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMSTECHNOLOGIES,

Defendant.

DEPOSITION OF LINDA TOMBLIN

Taken on behalf of the Plaintiff

November 8, 2007

- - -

BE IT REMEMBERED THAT, pursuant to the Idaho Rules of Civil Procedure, the deposition of LINDA TOMBLIN was taken before KATHERINE S. VANGRINSVEN, a Certified Shorthand Reporter, #757, on November 8, 2007, commencing at the hour of 9:35 a.m., the proceedings being reported at 1322 West Kathleen Avenue, Suite 2, Coeur d'Alene, Idaho.

1 A. That would be me.

2 Q. Okay. And this is after you have received the
3 first design by Spokane Structures?

4 A. I believe so.

5 Q. Okay. And so are you asking for changes?

6 A. Well, I don't know if you call them changes.
7 The first design, we didn't like. It wouldn't be something
8 we would want to construct. It didn't have some of the
9 things that we wanted, including an attractive exterior, so
10 I went back to our residential designer and asked, you
11 know: Can you, can you prettify this? I don't want it to
12 look like a big, hunkie warehouse added onto, you know, a
13 blocky structure on the side. I want it to look good when
14 it's done.

15 Q. When, when you referred to a designer, who were
16 you referring to?

17 A. Dave Blanford. He would be the same one that
18 did the drawing for me in Exhibit 1.

19 Q. Okay. So Dave was the residential designer, is
20 that the one you're referring to?

21 A. Yeah. That's what he does.

22 Q. Okay. And so when you received the first
23 design from Spokane Structures, you went back to the
24 residential designer and asked for suggestions on how to
25 change it?

1 Q. So it, it's whatever it was that you had
2 received from the residential designer?

3 A. Um-hum.

4 Q. Then you say that, "We added a cantilevered
5 area to break up the 'warehousey' look of the main
6 building."

7 That's correct, isn't it?

8 A. Um-hum. That's exactly what it says.

9 Q. Okay. Now, do you presume that a cantilevered
10 area is going to cost more than an uncantilevered area?

11 A. Correct. I was told it wouldn't be very
12 expensive to do.

13 Q. Okay. Who --

14 A. And we had already --

15 Q. -- told you that?

16 A. Actually, I -- that would be the residential
17 designer that I was working with, didn't think it would be
18 a lot more to add that.

19 Q. All right.

20 A. And we'd already dropped quite a bit out of the
21 building in terms of the -- I believe by then we'd dropped
22 out -- well, I'd have to go back and look.

23 Q. Okay. It says, "I will be getting a CAD file
24 with this later today."

25 Is that correct?

1 BY MR. WETZEL:

2 Q. "There is also a belly board around the entire
3 building to break up the 'upper' and 'lower' colors of the
4 horizontal Hardiboard"?

5 MR. MILLER: Objection, Counsel. You
6 inadvertently misread that.

7 BY MR. WETZEL:

8 Q. "There is also a belly board" -- "a belly band
9 around the entire building to break up the 'upper' and
10 'lower' colors on the horizontal Hardiboard."

11 A. Um-hum.

12 Q. Okay. What did you mean by that?

13 A. It means there was going to be a board that
14 went around the building that would be a different color
15 from the -- it would just break up the, the look of it.
16 So, again, instead of looking like a two-story warehouse,
17 it would be a more attractive design. They weren't really
18 adding anything to the building in terms of we were still
19 going to have the Hardiboard above and below. This was
20 just a color differentiation between the upper and lower
21 floors.

22 Q. So that was added, and then you go on to say,
23 "We're ready to rock and roll"?

24 A. Um-hum.

25 Q. Okay. So as of February 22nd, 2007, the plan

1 Q. Um-hum. Where did that suggestion come from?

2 A. Well, actually, Rob Lewis is the one that said
3 that we had to have a 10 percent contingency in there.

4 Q. Yes, I understand the 10 percent contingency,
5 but I'm wondering about the distinction of saying "is
6 expected to be," versus "not to exceed."

7 A. Well, the not to exceed probably came from
8 me.

9 Q. Okay.

10 A. Because I needed to make sure that that was in
11 there, that it, it was going to stay within budget.

12 Q. Did your attorney have any input on that
13 language?

14 MR. MILLER: Objection, that would seek
15 attorney-client privilege.

16 I would suggest you should not respond.

17 BY MR. WETZEL:

18 Q. Let me make sure that I understand the increase
19 in the 550,000 to the 605. You're saying that that is only
20 because of the 10 percent contingency?

21 A. That's my understanding, yes.

22 Q. Okay. And that was the only reason?

23 A. Yes.

24 Q. Okay. Let me have you turn now -- or before we
25 leave Exhibit 9, this document says Systemstechnologies in

1 A. I believe he did.

2 Q. Okay. Did you ever get a new one of these?

3 A. No.

4 Q. Did you ever ask for a new one?

5 A. No.

6 Q. Because you had decided not to move forward?

7 A. No. Actually, at this point, we were still
8 moving along figuring that something could be done to bring
9 this down within, within what we needed.

10 Q. Right. But did you request another budget
11 worksheet before you decided not to move forward?

12 A. No.

13 Q. Let me have you turn to the next document,
14 which is the Spokane Structures bills.

15 A. Yes.

16 Q. This, technically, it's an invoice.

17 Do you have any reason to believe that Spokane
18 Structures did not pay \$9,500 for plans and engineering?

19 A. It seemed high.

20 Q. Okay.

21 A. Wasn't there another page to this that spelled
22 this out in more detail? I think there was.

23 Q. Could have been.

24 A. But there were some things --

25 Q. This is, this is all that I was provided.

1 A. -- in here -- yeah. There were some things in
2 here that hadn't been done yet that were submitted as part
3 of this, including things to do with permitting fees and so
4 on.

5 Q. Okay. The architectural fees, \$4,600, do you
6 have any reason to believe that that was not expended by
7 Spokane Structures?

8 A. That, I don't know. That seemed high also, but
9 I don't know.

10 Q. Civil Engineering, do you have reason --

11 A. That's seemed really high, but, again, I don't
12 know.

13 Q. Okay. Do you have any reason to believe it was
14 not expended or is not an obligation of Spokane
15 Structures?

16 A. Without seeing what he was billed for, I
17 wouldn't know.

18 Q. Okay. Do you believe you have any -- does your
19 company have any obligation to pay any of these sums?

20 A. We paid the sum that we were obligated to pay,
21 which was the \$5,000 that was the contractual agreement,
22 the way I see it.

23 Q. Let me turn to the next -- have you turn to the
24 next page.

25 Did you draw that, the handwritten portions?

DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,
Plaintiff,

vs. No. CV-04-5646

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company,
a.k.a. SYSTEMSTECHNOLGIES
Defendant.

VIDEOTAPE DEPOSITION OF BART KLENG

Taken on behalf of the Plaintiff

November 13, 2007

- - -

BE IT REMEMBERED THAT, pursuant to the Idaho Rules of Civil Procedure, the videotape deposition of Bart Kleng was taken before Ronald L. Struve, a Certified Shorthand Reporter, and a Notary Public for the State of Idaho, on November 13, 2007, commencing at the hour of 9:30 a.m., the proceedings being reported at 1322 Kathleen Avenue, Suite 2, Coeur d'Alene, Idaho 83815-8339

1 for the record on the videotape.

2 THE REPORTER: I am the court reporter, Ron
3 Struve.

4 THE WITNESS: I am Bart Kleng.

5 MR. MILLER: Pat Miller, attorney for the
6 defendants.

7 MS. TOMBLIN: Linda Tomblin.

8 MR. TOMBLIN: Bruce Tomblin.

9 MR. WETZEL: Steve Wetzel, attorney for the
10 plaintiff.

11 EXAMINATION:

12 BY MR. WETZEL:

13 Q. Please state your full name and spell your last
14 name.

15 A. Bart George Kleng. Last name is spelled
16 K-L-E-N-G.

17 Q. What is your business address, Mr. Kleng?

18 A. 101 Ironwood Drive, Suite 148, Coeur d'Alene,
19 Idaho 83814.

20 Q. Who is your employer?

21 A. Mountain West.

22 Q. Do you know Linda Paris Tomblin and Bruce
23 Tomblin?

24 A. Yes, I do.

25 Q. How do you know them?

1 A. As customers of Mountain West Bank.

2 Q. When did you meet them?

3 A. I would suspect somewhere -- I am going to say I
4 first visited with Bruce by phone middle of 2006, and I
5 think I physically met them maybe in September, October of
6 2006.

7 Q. Did they request something from your employer?

8 A. Yes.

9 Q. What did they request?

10 A. A construction loan.

11 Q. And what was the construction loan for?

12 A. The construction of a new manufacturing and office
13 facility on Government Way.

14 Q. Okay. And in this deposition today I may refer to
15 the subject property. We both understand each other that's
16 what I will be referring to?

17 A. Yes.

18 Q. Had you worked with Tomblins or their businesses
19 before?

20 A. No, I had not.

21 Q. Had your employer loaned money to the Tomblins or
22 their business entities before?

23 A. Not that I am aware of.

24 Q. Do you know Spokane Structures?

25 A. No, I do not.

1 having guarantees and did some pricing adjustments based on
2 whether they would guaranty it or not guaranty it.

3 Q. Okay. Was it 75 percent loan to value is what you
4 used through the deal as long as they have the additional
5 collateral and the corporate guarantees?

6 A. I would have to look at the final, what we did as
7 the final write-up.

8 Q. Why don't you go ahead and look at that. Let's
9 make sure I am clear.

10 A. Okay. Here's a statement in the write-up itself.
11 It says that Mr. and Mrs. Tomblin opt to guaranty Mountain
12 West Bank the loan up to 75 percent on the new building and
13 no longer require a second deed of trust on the condo which
14 is an existing office building or require a bank control
15 certificate of deposit. If they didn't guaranty, it looks
16 like we were using a loan to value of 65 percent.

17 Q. Okay.

18 A. So we had two scenarios. If they guaranteed or
19 didn't guarantee.

20 Q. And as you were getting closer to the closing, had
21 the Tomblin pick one scenario?

22 A. They ultimately did pick a scenario.

23 Q. And what was that scenario that they wished to
24 proceed on?

25 A. It was to not guaranty the loan.

1 Q. Okay. So they were going to be using 65 percent
2 loan to value?

3 A. Yes, that's my understanding.

4 Q. Okay. Now, that was going to require some
5 additional collateral?

6 A. Correct.

7 Q. Had it been determined what that additional
8 collateral would be?

9 A. Yes. It was an office condo that they had in
10 Hayden.

11 Q. Okay. So there would be a second deed of trust on
12 that?

13 A. Correct.

14 Q. And anything else?

15 A. And also the creation of a two-year certificate of
16 deposit for \$50,000.

17 Q. Okay. So they were going to give the bank a
18 second deed of trust on that commercial condominium in
19 Hayden and then on top of that they were going to deposit
20 \$50,000 with Mountain West on a certificate of deposit?

21 A. Yes.

22 Q. Which would be security for the loan?

23 A. Correct.

24 Q. Okay. Thank you. On the handwritten pages it
25 starts out with Systemstech on the top. It has 030405.

1 A. Yes.

2 Q. Okay. Now, what is that?

3 A. That would be just a kind of a quick analysis of
4 determining whether or not the project would cash flow.

5 Q. I see. So it was based upon some rent values
6 Systemstech would be paying and you were doing some
7 calculations as to the adequacy of the cash flow after the
8 improvements were completed?

9 A. This particular sheet right here is just the --
10 basically the cash flow generated by Systemstechnologies.

11 Q. Okay. And that would be the corporate cash flow
12 or was it rent to pay for the building?

13 A. Corporate cash flow.

14 Q. Okay. And how did it look as far as the deal
15 itself? Did it look tight for Systemstech?

16 MR. MILLER: Object to form.

17 THE WITNESS: What does that mean?

18 BY MR. WETZEL:

19 Q. It means you can go ahead and answer, but he has
20 an objection for a later time.

21 A. Okay. It determined that they qualified for the
22 loan.

23 Q. Okay. But did it appear that it was going to be
24 tight for Systemstech?

25 MR. MILLER: Same objection.

1 THE WITNESS: So I can still answer?

2 BY MR. WETZEL:

3 Q. Yes.

4 A. It looked likes there was adequate margin to
5 service the debt.

6 Q. Good. The next page we're again looking at
7 appears some calculations and some rent, et cetera, and
8 toward the bottom you appear to be looking at some different
9 amortizations on \$640,000 and it has an interest rate of
10 8.25.

11 A. Okay.

12 Q. Okay.

13 MR. MILLER: Excuse me, counsel. Which page are
14 we on?

15 MR. WETZEL: That's 48.

16 Q. Tell me what was happening on interest rates
17 during this period of time. The Tomblins came in to see you
18 first in late fall 2006.

19 A. Right.

20 Q. Okay. And then they were to close in the early
21 spring of -- or spring I suppose of 2007. What was going on
22 as far as interest rates during this period of time?

23 A. My recollection is that they were fluctuating. I
24 couldn't tell you what percentage that they were
25 fluctuating, but -- and I kept the Tomblins informed about

1 Q. But each of those approaches does not distinguish
2 the building before the construction and the building after
3 the construction, right?

4 A. Not in any of these approaches, no. I mean we
5 would have been using -- and we decided what the assessed
6 value is of the property. Lots of times we use the current
7 assessed value from the county to track what its current
8 value is.

9 Q. What it's current value is. Okay. Let me ask you
10 one other issue in regards to the document No. 31.

11 A. Okay.

12 Q. Okay. At the end of the columns it says, "Equals
13 maximum loan amount 642,127.

14 A. Okay.

15 Q. What does that mean?

16 A. That if -- if we go back there, look at the first
17 line, it says, "Property value of the building" and in bold
18 it says, "The Government Way property and both condos." If
19 we take that property plus the estimated the values of the
20 condos, we come up with that combined property value for all
21 three properties at \$1,111,666. So after we applied that 65
22 percent loan to value, we determined that there was lendable
23 equity of \$722,582 less -- there was -- they had prior liens
24 on the condos. So if we subtracted the 80 from the 722,
25 that's how we got that 642. So that was basically based on

1 our evaluation the maximum loan amount.

2 Q. So --

3 A. If we used all three properties as collateral.

4 Q. Okay. So the 642, \$642,127 would be available for
5 the loan?

6 A. If they were to use all the properties.

7 Q. And they were planning on using all properties,
8 correct?

9 A. I don't know if they were planning on it. I know
10 that we were -- that I ran this scenario.

11 Q. Okay. But as you prepared the loan documents,
12 didn't you use all three properties as security?

13 A. No. Just -- I would have to look at it again. I
14 think we were just using the subject property on Government
15 Way and then a second deed of trust on one condo.

16 Q. I see. So you weren't using both condos?

17 A. Right. And I honestly can't say this could have
18 come from my own giving this as an option to them. I don't
19 know that they ever wanted to look at this scenario.

20 Q. Okay. Could you hand that to the court reporter,
21 that document, that page --

22 A. Yes.

23 Q. Just that page. Could you mark that.

24 (Whereupon, Loan amount scenarios was marked
25 Exhibit-1 for identification.)

1 not refer to any percentage of contingency and her response
2 seems to refer only to a 10 percent contingency; is that
3 correct?

4 A. My specific sentence there does not say a
5 percentage and clearly those represent 10 percent.

6 Q. Do you recall if you spoke to Linda Tomblin about
7 a 20 percent contingency?

8 A. I don't recall specifically 20 percent. That's
9 numbers that I worked on multiple construction projects and
10 so that is normal numbers that I throw out is 10 to 20.
11 Could I say I specifically told Linda or Bruce that, I
12 can't.

13 Q. Okay. Let me have you take a look at the next
14 document.

15 A. Okay.

16 Q. We seem to be talking -- it's entitled Pricing
17 Model. We seem to be talking about a type of a loan in
18 commercial term, equipment, and a total loan commitment of
19 \$\$620,000; is that correct?

20 A. Yes.

21 Q. Okay. And the \$620,000 is the same amount as you
22 were talking about in the Boarding Data Sheet, correct?

23 A. That is correct.

24 Q. Okay. Could I have you take a look at the next
25 document. It seems to be an amended Schedule A issued by

1 North Idaho Title.

2 A. Okay.

3 Q. Okay. And the liability again is \$620,000,
4 correct?

5 A. Yes.

6 Q. Who would have ordered this title policy?

7 A. I believe I would have --

8 Q. Okay.

9 A. -- or an assistant in our department would have
10 ordered it.

11 Q. Right. So \$620,000 was the amount that you were
12 figuring would be needed on November 9th, 2006, correct?

13 A. Correct.

14 Q. Skip over to the document dated 11/17/2006. Seems
15 to be an email from Linda Paris to you. You see that?

16 A. Again that appears to be a -- I mean there are
17 multiple emails on that page.

18 Q. Right. Although I am looking at a different one.
19 Take a look at No. 15 on the Bates stamp.

20 A. Oh.

21 Q. Maybe not.

22 MR. MILLER: There was a No. 16 on top of that.

23 BY MR. WETZEL:

24 Q. Yeah, skip 16. Go to --

25 A. Oh, I am sorry. Okay.

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
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CLERK DISTRICT COURT

DEPUTY

Steven C. Wetzel, ISB #2988
Kevin P. Holt, ISB #7196
WETZEL, WETZEL, BREDESON & HOLT, PLLC
1322 Kathleen Ave., Suite 2
Coeur d'Alene, Idaho 83815-8339
Telephone: (208) 667-3400
Facsimile: (208) 664-6741

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMSTECHNOLOGIES,

Defendant.

Case No. CV-07-4062

STATEMENT OF CONTESTED FACTS

COMES NOW the Plaintiff, by and through its counsel of record, WETZEL, WETZEL, BREDESON & HOLT, P.L.L.C., and hereby submits this Statement of Contested Facts in Opposition to Defendant's Motion for Summary Judgment. A statement of contested facts is not as easily set forth in this type of case as in a negligence case since the issues tend to flow from rulings of law or factual determinations after full and fair disclosure.

THE FOLLOWING DISPUTED ISSUES OF MATERIAL FACT EXIST.

STATEMENT OF CONTESTED FACTS - 1

1. The reasonable interpretation of the agreement, when the actions and words of the parties are fully reviewed.

2. The intent of the parties in the inclusion of the restrictive phrase "not in excess of \$605,000."

3. Whether the term pertaining to the \$605,000 limit should be construed against the defendant as the drafter and the party attempting to use the term to defeat the contract.

4. Whether a design costing in excess of \$644,000 is derived from the actions of the contractor and owner prove that the intent of the parties was not strictly limited to the \$605,000.

5. The intent of the parties in regard to the \$5,000.00 payment.

6. Whether the lender refused to loan the money for the project.

7. Once the intent of the parties is determined, the issue becomes whether either party breached the agreement.

8. The proper amount of damages to be awarded to the non-breaching Plaintiff.

DATED this 27th day of February, 2008.

WETZEL, WETZEL, BREDESON &
HOLT, P.L.L.C.

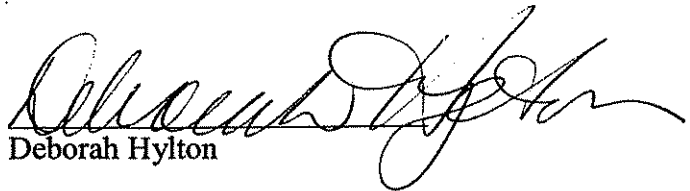
By 

Kevin P. Holt
Attorneys for Plaintiff

CERTIFICATE OF DELIVERY

I hereby certify that on the 27 day of February, 2008, I served the foregoing document upon:

<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 664-6338	PATRICK E. MILER AMY C. BISTINE PAIEN HAMBLÉN LLP 701 E Front Avenue, Suite 101 P.O. Box E Coeur d'Alene, ID 83816-2530 <i>Attorneys for Defendant</i>
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Deborah Hylton

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STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
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CLERK DISTRICT COURT
Ruthy Bayless
DEPUTY
VS

PATRICK E. MILLER - ISBA #1771
PAINE HAMBLIN LLP
701 Front Avenue, Suite 101
P.O. Box E
Coeur d'Alene, ID 83816-2530
Telephone: (208) 664-8115
Facsimile: (208) 664-6338

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMS TECHNOLOGIES,

Defendant.

)
) Case No. CV-07-4062
)
) **DEFENDANT'S REPLY**
) **MEMORANDUM IN SUPPORT OF**
) **MOTION FOR SUMMARY**
) **JUDGMENT**

COMES NOW, the defendant, and pursuant to the rules of the Court, submits this Reply
Brief in Support of its Motion for Summary Judgment.

DEFENDANT'S REPLY MEMORANDUM IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 1

THE SEPTEMBER 28, 2006 AGREEMENT IS UNAMBIGUOUS

It is undisputed that plaintiff and defendant entered into the September 28, 2006 agreement. Plaintiff's memorandum in opposition to defendant's motion for summary judgment, p. 4, ¶ 4; Deposition of Linda Tomblin, p. 49, ll.6-12; Ex. C of Defendant's Submission in Support of Motion for Summary Judgment.

There is no disagreement between the parties that they executed the September 28, 2006 agreement. That is the contract between the parties.

The first issue to be resolved in any breach of contract claim is to define what the contract is between the parties. *Sorenson v. St. Alphonsus Regional Medical Center, Inc.*, 141 Idaho 754, 759, 118 P.3d 86, 91 (S.Ct., 2005).

Construction of the meaning of a contract begins with the language of the contract. *Albee v. Judy*, 136 Idaho 226, 230, 31 P.3d 248, 252. If the contract's terms are clear and unambiguous, the determination of the contract's meaning and legal effect are questions of law and the meaning of the contract and intent of the parties must be determined from the plain meaning of the contract's own words. *Albee v. Judy, supra, citing to Taylor v. Browning*, 129 Idaho 483, 927 P.2d 873 (S.Ct., 1996).

It is only when the court determines, as a matter of law that the contract is ambiguous, that it looks outside the agreement language to determine the intent of the parties. *Albee v. Judy, supra*. It is only then that the interpretation of the document presents a question of fact which

focuses upon the intent of the parties. *Bondy v. Levy*, 121 Idaho 993, 997, 829 P.2d 1342, 1346 (S.Ct., 1992).

It is not the function of the court, in interpreting the plain meaning of the agreement, to change or make a better agreement for the parties. *Bondy v. Levy, supra*, p. 997. Nor, can the court make a contract between the parties. *Minidoka County v. Krieger*, 88 Idaho 395, 416, 399 P.2d 962, 975, (S.Ct., 1965).

The September 28, 2006 agreement provides that:

Spokane Structures, Inc., agrees to design, engineer, and draft plans in preparation of all documents/drawings required to enable the owner and contractor to agree on a final design and cost of construction to be performed. (Emphasis added).

Ex. 25, Deposition of Linda Tomblin.

The contract listed certain minimum requirements of the drawings.

The contract then specified a clear condition as to the cost of construction upon which the parties would, in the future address. That condition clearly stated that the cost for construction could not exceed \$605,000, including all costs associated with the construction and overhead and profit. The sentence is clear. Defendant was not required to agree to a construction cost in excess of \$605,000.

The agreement provided for two steps. They were agreement upon a design plan and agreement on a construction cost, provided that the construction cost did not exceed \$605,000. The contract defined that "construction costs" included all costs associated with the construction including overhead and profit.

The contract does contain a contingency in the event of change orders, or otherwise, amendments to the contract. A change order must be in writing and would be billed at the cost of the change plus 20% for overhead and profit. The fact that the parties, by the agreed contract language provided for a contingency that did not arise, does not make the contract terms ambiguous.

As reflected by the submitted materials, plaintiff submitted a sales contract and work order to defendant. Ex. 4, Deposition of Linda Tomblin. The construction price was based on plans and specifications dated March 16, 2007. Ex. 4, Deposition of Linda Tomblin. The sales contract and work order provided for a construction cost price of \$644,072.00. That amount exceeds the \$605,000 maximum as set forth in the September 28, 2006 agreement. Plaintiff seeks to now characterize the sales contract and work order, with the included price of \$644,072 as a "bid" or merely negotiation. There is nothing within the March 16, 2007 proposed agreement which supports such a contention. The clear language of the March 16, 2007 document is that it, upon execution, was a binding agreement that would have controlled the obligations of the parties.

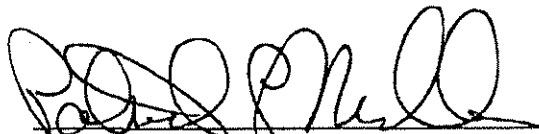
The September 2006 agreement provided that the parties were to first agree on a design plan, then they were to agree on a construction cost. A failure to agree upon either would not constitute a breach of contract. Moreover, the September 28, 2006 contract provided a specific, clear construction cost limitation. That construction cost limitation was \$605,000. The defendant was entitled to rely on that clear condition in evaluating and deciding upon its course.

The plaintiff submitted a contract to defendant for the construction of the buildings. Ex. 4, to Deposition of Linda Tomblin. Defendant declined to execute that contract. There was no meeting of the minds as to this new agreement. This agreement proposed a construction price of \$644,072, which exceeded the \$605,000 limitation of the September 28, 2006 agreement. The decision not to execute this agreement does not constitute a breach of contract.

In conclusion, a review of the September 28, 2006 agreement reflects that it is clear and unambiguous. There is no basis to review the pre-contract negotiations or any party's understanding of the agreement. The intent of the parties is by the clear language of the September 28, 2006 agreement. The plaintiff proposed a construction cost in excess of \$605,000. The parties were obviously not in agreement and did not come to agreement. That is not a breach of contract.

The defendant continues to rely upon the materials, exhibits submitted in support of its motion for summary judgment and will rely upon the authorities submitted by its memorandum in support of the motion.

DATED this 5th day of March, 2008.

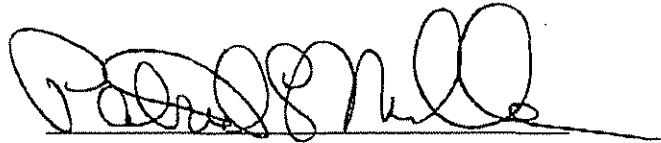

PATRICK E. MILLER
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of March, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Steven C. Wetzel
Kevin P. Holt
WETZEL & WETZEL, PLLC
1322 Kathleen Avenue, Suite 2
Coeur d'Alene, ID 83815-8339

- ☐ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ TELECOPY (FAX) to: 664-6741



Patrick E. Miller

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1 COEUR D'ALENE, IDAHO

2 WEDNESDAY,

3 MARCH 12, 2008

4 2:37 P.M.

5 * * *

6 THE COURT: Well, counsel, again, I had a
7 chance to review the memorandum and the attached
8 affidavits in support of and in opposition to the
9 motion for summary judgment that's been brought by
10 the defendant. And basically what we have here is a
11 complaint that was filed.

12 This lawsuit involves a breach of
13 contract seeking specific performance, a breach of
14 contract seeking money damages, alternative theory
15 violation/enforcement of a quasi-contract, unjust
16 enrichment/restitution, implied-in-fact contract,
17 promissory estoppel; many of the equitable remedies
18 have not really been argued that extensively here by
19 counsel either today or in the briefing.

20 But, primarily, the question, I think, really
21 falls on the issue of whether or not we do have a
22 contract, whether that contract is enforceable, and
23 if so, what are the terms of that contract and the
24 scope of that contract.

25 Basically, the contract in question is the

1 September 28, 2006 agreement between Spokane
2 Structures and Equitable Investment. That contract,
3 I think, is more specifically referred to as a
4 "Design/Build Agreement."

5 The lawsuit was triggered as a consequence of
6 the proposed sales contract and work order that was
7 prepared and signed by Spokane Structures on the
8 16th of March, 2007, which, ultimately, the
9 defendant chose not to sign, and, therefore,
10 triggering the lawsuit that's in front of the Court.

11 The plaintiff seeks to enforce a contract for
12 the services of construction of the building in
13 question for Equitable Investment, and Equitable
14 Investment contends they have no obligation to
15 proceed with the agreement because no such agreement
16 ultimately was entered into, and the original
17 Design/Build Agreement did not commit them to that
18 final agreement to engage in the construction of the
19 building.

20 The Court, again, has a motion for summary
21 judgment, and since I am going to deal with some
22 oral pronouncements and decision here, I should
23 review briefly the standards for summary judgment,
24 which counsel is certainly well aware of.

25 Standards for summary judgment do provide that

1 it must be granted where there is no genuine issue
2 of material fact and, as a matter of law, the moving
3 party would be entitled to such a judgment. This is
4 provided for under Rule 56(c).

5 Where the matter is to be tried to a jury, the
6 Court will construe all facts liberally in favor of
7 the party opposing the motion and must give the
8 non-moving party the benefit of all favorable
9 inferences which might reasonably be drawn from the
10 evidence.

11 The party opposing the motion cannot rest
12 merely on allegations. Once the moving party has
13 properly supported the motion, then the non-moving
14 party must come forward with evidence which
15 contradicts the evidence submitted by the moving
16 party and which establishes the existence of a
17 material issue of disputed fact.

18 If there are no genuine issues of material
19 fact, the Court will determine whether a party is
20 entitled to judgment as a matter of law.

21 Now, the primary question in front of the
22 Court focuses on the allegation that the defendant
23 has, in fact, breached the contract that was entered
24 into between the parties. The heart of this issue
25 is the breach of contract, which is noted as the

1 "Design/Build Agreement" dated September 28th of
2 2006.

3 Now, the Court is required, of course, to
4 examine the contract and make a determination as to
5 whether or not the terms of the contract are clear
6 and unambiguous. If a contract is clear and
7 unambiguous, the determination of the contract's
8 meaning and legal effect are questions of law. The
9 meaning of the contract and the intent of the
10 parties is determined from the plain meaning of the
11 contract's own words.

12 The term is ambiguous if it is reasonably
13 subject to conflicting interpretations. If the
14 Court determines that the contract is ambiguous as a
15 matter of law, then it looks outside the agreement
16 language to determine the intent of the parties.

17 Now, that's certainly the standard that the
18 Court is guided in terms of examining the contract
19 to determine whether we have an ambiguous document
20 or not.

21 Now, counsel earlier referred to the summary
22 judgment standards, and, certainly, if I'm dealing
23 with some factual questions or some evidentiary
24 questions and the inferences that need to be drawn
25 at this level should be drawn in favor of the

1 non-opposing party, but when I examine whether or
2 not we have a contract that is ambiguous or not, I
3 think that's simply a question of law that the Court
4 has to examine to make a determination as to whether
5 or not we have an ambiguous agreement. I don't
6 think we get into any construction that would be
7 inclined to favor the non-moving party; we just look
8 to the terms of the agreement.

9 The Court is not satisfied that we have an
10 ambiguous agreement. We do have what appears to be
11 a very clear and specific agreement. The agreement
12 is entitled a "Design/Build Agreement." It provides
13 that Spokane Structures agrees to design, which they
14 apparently have done; engineer, which they
15 apparently have done; and draft plans in preparation
16 of all documents/drawings required to enable the
17 owner and the contractor to agree on a final design
18 and cost of construction to be performed.

19 That language in and of itself is clear and
20 unambiguous to the extent that it certainly commits
21 Spokane Structures to engage in efforts to design,
22 engineer, and draft plans and prepare documents for
23 the purposes of enabling the parties to reach a
24 final agreement with respect to the cost of
25 construction.

1 The agreement goes on to specify that "A final
2 cost for construction will be provided upon
3 completion of the plans and approval from the City
4 of Hayden Building Department. The cost for
5 construction is not to exceed \$605,000.00."

6 The contract goes on to provide that "This
7 agreement is contingent upon the owners getting
8 financing. Should financing not be obtained Spokane
9 Structures, Inc. will be paid \$5,000.00 for the
10 plans. A \$2,500.00 retainer is required at signing
11 of this agreement."

12 So, clearly, there is an agreement between the
13 parties to work and engage in good faith toward
14 reaching an agreement for the purposes of
15 constructing and having a building constructed on
16 the defendant's property. But the contract itself
17 does not, in fact, obligate the defendant to
18 actually enter into an agreement.

19 Now, there's been a lot of discussion here and
20 argument about the \$605,000.00 threshold or
21 walk-away figure. And while I think that certainly
22 is instrumental to the contract, because it did
23 provide a specific price which was not met, I'm not
24 sure that that's really necessarily the determining
25 factor.

1 I know in Mr. Lewis' deposition, he indicated
2 that that's not the sort of language that they
3 typically put in a design/build contract. Even if
4 we had the typical contract that Mr. Lewis was using
5 and didn't have that threshold amount in it, I still
6 don't think that the contract by its terms obligates
7 the defendant to basically enter into a contract to
8 purchase the services to construct this building.

9 In this particular case, there, of course, is
10 a threshold figure when the parties engaged in their
11 discussions and in their preparations to negotiate a
12 final agreement, they reached a point where the
13 proposed building that was to be constructed
14 exceeded the \$605,000.00 figure that the defendants
15 apparently were concerned about, and they simply
16 chose not to go forward with the agreement.

17 Again, the clear and express language of the
18 agreement does not call for the defendants, again,
19 to be bound ultimately by any specific terms that
20 may have been breached. It only required them to
21 work in the direction for the purposes to try to
22 agree on a final design and cost of construction to
23 be performed.

24 And so I don't think that -- the Court would
25 so find we do not have an ambiguous agreement. We

1 do have an express contract. The express contract
2 is clear and it's unambiguous. It does not obligate
3 the defendant to, in fact, commit to a construction
4 based upon any plans that would ultimately have been
5 provided, and, so, therefore, there cannot be any
6 breach of contract when the defendants opted out of
7 their desire to proceed with the work.

8 Once the Court has concluded that we have an
9 unambiguous contract and has concluded that the
10 express terms of that contract do not obligate the
11 defendant to proceed with the construction plans,
12 then there would be no equitable remedies that would
13 consequently lie in this matter, so we don't need to
14 discuss those any further.

15 And so with those oral pronouncements, it is
16 the opinion of the Court that there is no material
17 issue of dispute in front of the Court, and as a
18 matter of law, the defendant is entitled to summary
19 judgment in this matter.

20 And, Mr. Miller, if you will prepare that
21 decision for the Court, please.

22 MR. MILLER: And, Your Honor, in that, may I
23 refer to the Court's findings this afternoon?

24 THE COURT: Yes, please.

25 MR. MILLER: And is it my understanding where

1 the Court is referencing findings of fact that may
2 be questions of law that I can use the usual
3 language in that regard?

4 THE COURT: Please, that would be fine. Just
5 go ahead and prepare a final judgment and make
6 reference to the Court's oral pronouncement. I
7 don't need to incorporate everything that I've done
8 here.

9 MR. MILLER: Thank you, Your Honor.

10 THE COURT: Mr. Holt, do you have any
11 questions?

12 MR. HOLT: I do not, Your Honor.

13 THE COURT: Thank you both for your time. And
14 with that, we'll stand adjourned.

15 (Whereupon the proceedings were concluded)

16 * * *

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C E R T I F I C A T E

STATE OF IDAHO)
COUNTY OF KOOTENAI) ss.


I, ANNE MACMANUS, a duly certified court reporter in the State of Idaho, DO HEREBY CERTIFY:

That the foregoing transcript, contained in pages 1 through 10, is a complete, true, and accurate transcription, to the best of my ability, of my shorthand notes taken down at said time and place in the above-entitled litigation.

That said transcript contains all material designated in the Notice of Appeal, any Cross-Appeal, or any requests for additional transcript which have been served on me.

I FURTHER CERTIFY that I am not related to any of the parties or attorneys to this litigation and have no interest in the outcome of said litigation.

IN WITNESS WHEREOF, I have hereunto set my hand on March 21, 2008.


ANNE MACMANUS, CSR
Official Court Reporter
CSR No. 282

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED
AT 5:03 O'CLOCK P.M.
CLERK, DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMS TECHNOLOGIES,

Defendant.

Case No. CV-07-4062

ORDER

THIS MATTER came on to be heard on March 12, 2008, upon Defendant's Motion for an Order Granting Summary Judgment against Plaintiff on the ground that there is no genuine issue as to any material fact in this action and that Defendant is entitled to judgment in its favor as a matter of law.

Plaintiff, Spokane Structures, Inc., appeared by its attorney, Kevin P. Holt and Defendant Equitable Investment, LLC, appeared by its attorney, Patrick E. Miller.

The Court, having read and considered the records and file in this matter, the pleadings, the affidavits and exhibits of Defendant submitting in support of the motion, the affidavit and exhibits of Plaintiff submitted in opposition to the motion, the Memorandum of points and authorities filed by the parties in support of and in opposition to the motion, and all other papers and documents filed by the parties in support of and in opposition to the motion, and having considered the oral argument of counsel for the respective parties, and in accordance with, and reflected by, the Court's analysis, Findings of Fact, and Conclusions of Law, as set forth upon the record of the hearing on March 12, 2008.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that there exists no issue as to any material fact and that Defendant is entitled to judgment as a matter of law.

NOW, THEREFORE, IT IS ORDERED that Defendant's Motion for Summary Judgment against Plaintiff be, and it is, granted and that judgment will be entered in favor of the Defendant Equitable Investment, LLC, and against the Plaintiff, Spokane Structures, Inc.

DATED this 30 day of April, 2008.



HONORABLE JOHN P. LUSTER

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15 day of April, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kevin P. Holt
Steven C. Wetzel
WETZEL & WETZEL, PLLC
1322 Kathleen Avenue, Suite 2
Coeur d'Alene, ID 83815-8339

☐ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ TELECOPY (FAX) to: (208) 664-6741

Patrick E. Miller
Attorney at Law
701 Front Avenue, Suite 101
P.O. Box E
Coeur d'Alene, ID 83816-0328

☐ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ TELECOPY (FAX) to: (208) 664-6338

DANIEL J. ENGLISH
CLERK OF THE DISTRICT COURT

By: 

DEPUTY

I am the attorney for defendant in the above-entitled action. I have been engaged in the practice of law since 1975. The hourly rate for my services in 2007 was \$200. The hourly rate for my services beginning January 1, 2008 until the present is \$250. Attached hereto as Exhibit "A" is a true and correct itemized statement of the work I have done relative to this action.

Amy C. Bistline was an associate attorney in my law firm during 2007. Her hourly rate was \$175. Attached hereto as Exhibit "B" is a true and correct itemized statement of the work done by said associate relative to this action.

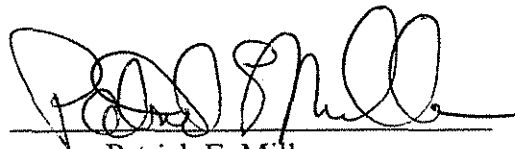
Caren Burke is a paralegal employed by my law firm. The billing rate for Ms. Burke is \$75 per hour. Carla Herndon was a paralegal employed by my law firm during 2007. The billing rate for Ms. Herndon is \$75 per hour. Attached hereto as Exhibits "C" and "D" respectively, are true and correct itemized statements of the paralegal work done by said staff relative to this action.

I believe in good faith, and therefore state, that the amount of fees claimed in Defendant's Memorandum of Costs and Attorney Fees, as itemized on Exhibits "A" through "D" attached hereto, are reasonable considering the factors set forth in Rule 54(e)(3) of the Idaho Rules of Civil Procedure, to wit:

<u>Rule 54(e)(3)</u>	<u>Explanation</u>
A. The time and labor required:	See exhibits attached hereto.
B. The novelty and difficulty of the question:	Reasonable for an experienced attorney

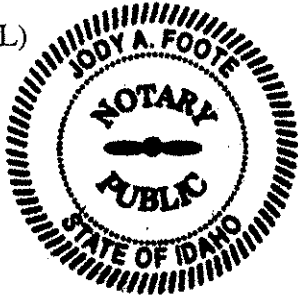
- C. The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law: Reasonable for an experienced attorney
- D. The prevailing charges for like work: The fees requested are within the range of fees in this area for this type of case.
- E. Whether the fee is fixed or contingent: Hourly basis.
- F. Time limitations imposed by client or circumstances of this case: None.
- G. The amount involved and the results: Plaintiff requested damages against defendant in an amount in excess of \$10,000 and enforcement of the contract. Defendant prevailed.
- H. Undesirability of case: Not applicable.
- I. The nature and length of the professional relationship with the client: The defendant had been a client of a now retired partner, Eugene L. Miller, for a number of years. After Mr. Miller's retirement, the defendant asked that I undertake to provide legal services.
- J. Awards in similar cases: I believe and state that this is within the range of awards for similar cases.
- K. The reasonable cost of automated legal research. Not applicable.

DATED this 16th day of April, 2008.


Patrick E. Miller

SUBSCRIBED AND SWORN to before me this 16th day of April, 2008.

(SEAL)



Jody A. Foote
Notary Public for Idaho
Residing at Coeur d'Alene
Commission Expires: 7/10/2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of April, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Steven C. Wetzel
Kevin P. Holt
WETZEL & WETZEL, PLLC
1322 Kathleen Avenue, Suite 2
Coeur d'Alene, ID 83815-8339

- ☒ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX) to: 664-6741

Patrick E. Miller

Patrick E. Miller

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EXHIBIT "A"
Recap of Time
Patrick E. Miller

DATE	HOURS	AMOUNT	DESCRIPTION
7/18/2007	0.4	\$ 80.00	Analyze file for answer.
7/18/2007	0.2	\$ 40.00	Analyze discovery for response.
7/23/2007	0.7	\$ 140.00	Analyze materials for client conference discovery response.
7/24/2007	0.4	\$ 80.00	Prepare for client meeting.
7/24/2007	1.7	\$ 340.00	Conference with client.
7/24/2007	0.2	\$ 40.00	Telephone call to plaintiff attorney regarding motion
7/31/2007	0.4	\$ 80.00	Legal research regarding benefit argument by plaintiff.
8/2/2007	2.9	\$ 580.00	Legal research regarding COA elements for answer and affirmative defense issues; analyze plaintiff discovery for additional points of answer.
8/2/2007	2.4	\$ 480.00	Analyze file for case plans and relate plan to discovery information.
8/3/2007	3.2	\$ 640.00	Analyze and draft discovery response, legal research regarding affirmative defense points and review client documents regarding response.
8/6/2007	0.8	\$ 160.00	Analyze discovery for supplementation and motion.
8/15/2007	0.7	\$ 140.00	Telephone conference with client and with witness J. Leonard.
10/31/2007	2.4	\$ 480.00	Conference with client - prepare for deposition.
11/5/2007	1.9	\$ 380.00	Analyze file to prepare clients for deposition.
11/6/2007	2	\$ 400.00	Conference with clients - prepare for depositions.
11/7/2007	0.7	\$ 140.00	Assess and plan for client deposition preparation.
11/7/2007	2.8	\$ 560.00	Conference with client - prepare for deposition.

EXHIBIT "A"
Recap of Time
Patrick E. Miller

11/8/2007	0.3	\$	60.00	Prepare for client deposition.
11/8/2007	0.2	\$	40.00	Travel to client deposition.
11/8/2007	2.6	\$	520.00	Attend client deposition.
11/8/2007	0.2	\$	40.00	Travel to office.
11/8/2007	0.3	\$	60.00	Telephone conference with plaintiff attorney regarding bank records.
11/9/2007	1	\$	200.00	Analyze bank records for discovery disclosure.
11/12/2007	0.7	\$	140.00	Conference with plaintiff attorney regarding exhibits for deposition of client and bank witness.
11/12/2007	0.6	\$	120.00	Prepare notes for bank representative deposition.
11/13/2007	0.7	\$	140.00	Prepare for deposition - review materials.
11/13/2007	0.3	\$	60.00	Travel to deposition.
11/13/2007	2.5	\$	500.00	Attend depositions.
11/13/2007	0.3	\$	60.00	Travel to office.
12/4/2007	1	\$	200.00	Travel to, attend status conference, and travel to office.
12/10/2007	0.1	\$	20.00	Dictate correspondence to client regarding status.
2/6/2008	0.1	\$	25.00	Analyze discovery response info provided by client.
2/7/2008	0.5	\$	125.00	Analyze material for discovery response objections, telephone conference with client regarding materials to clarify origin, conference with paralegal regarding documents to produce.
2/8/2008	1.3	\$	325.00	Legal research in support of motion for summary judgment
2/8/2008	1.7	\$	425.00	Continued legal research in support of motion for summary judgment.

EXHIBIT "A"
Recap of Time
Patrick E. Miller

2/8/2008	1.1	\$	275.00	Legal research in support of motion for summary judgment.
2/11/2008	2	\$	500.00	Legal research for motion for summary judgment brief.
2/11/2008	3.3	\$	825.00	Legal research and draft of motion for summary judgment brief.
2/12/2008	0.7	\$	175.00	Draft additional points for motion for summary judgment.
2/12/2008	0.4	\$	100.00	Draft additions to brief in support of motion for summary judgment.
2/12/2008	0.4	\$	100.00	Draft status report to client.
2/25/2008	0.1	\$	25.00	Telephone call to client and message regarding motion for summary judgment.
2/25/2008	0.1	\$	25.00	Telephone conference with client regarding motion for summary judgment.
2/27/2008	0.3	\$	75.00	Initial analysis of plaintiff response to defendant's motion for summary judgment.
2/29/2008	2.3	\$	575.00	Analyze plaintiff filings regarding motion for summary judgment.
3/4/2008	0.2	\$	50.00	Analyze brief for changes.
3/4/2008	0.4	\$	100.00	Draft changes to brief.
3/12/2008	1.3	\$	325.00	Analyze plaintiff material, prepare for argument, review authority.
3/12/2008	1.4	\$	350.00	Prepare for motion argument.
3/12/2008	0.1	\$	25.00	Travel to court for argument.
3/12/2008	1.2	\$	300.00	Attend hearing.
3/12/2008	0.1	\$	25.00	Travel to office.
3/12/2008	0.1	\$	25.00	Telephone call to client - advise of ruling.
3/12/2008	0.2	\$	50.00	Draft report re: hearing and procedure, outline regarding judgment.

EXHIBIT "A"
Recap of Time
Patrick E. Miller

53.9 \$ 11,745.00

EXHIBIT "B"
Recap of Time
Amy Bistline

DATE	HOURS	AMOUNT	DESCRIPTION
6/7/2007	0.1	\$ 17.50	Telephone conference with Steve Wetzel regarding service.
6/8/2007	0.1	\$ 17.50	Telephone conference with Linda re: acceptance of service and message to Steve Wetzel.
6/11/2007	1.1	\$ 192.50	Review complaint, acceptance of service and discovery. Forward to client.
6/13/2007	0.2	\$ 35.00	Telephone conference with Linda and Bruce re: complaint and evaluation of case.
6/28/2007	0.4	\$ 70.00	Preparation of motions and affidavits for enlargement of time to answer and discovery.
7/5/2007	0.3	\$ 52.50	Telephone conference with Bruce re status of matter. Follow up with sending documents.
8/2/2007	0.3	\$ 52.50	Analysis of discovery issue regarding contract performance.
	2.5	\$ 437.50	

EXHIBIT "C"
Recap of Time
Caren Burke

DATE	HOURS	AMOUNT	DESCRIPTION
11/9/2007	0.1	\$ 7.50	Call to Linda Tomblin re: Bank records to be produced in discovery.
11/9/2007	0.5	\$ 37.50	Travel to pick-up bank records from Bart Kleng at Mountain West Bank.
11/12/2007	1.7	\$ 127.50	Prepare log of privileged discovery documents being produced by Defendants.
1/16/2008	1.2	\$ 90.00	Draft responses to Plaintiff's 2nd Requests for Production of Documents.
2/5/2008	0.4	\$ 30.00	Revise Answers to Plaintiff's 1st Set of Interrogatories.
2/5/2008	0.1	\$ 7.50	Call to Linda Tomblin regarding Discovery Responses.
2/6/2008	0.3	\$ 22.50	Calls to Linda Tomblin to discuss discovery responses due 02/10/08.
2/6/2008	0.5	\$ 37.50	Review case files to determine if defendant's discovery responses need to be supplemented.
2/7/2008	0.1	\$ 7.50	Telephone conference with Linda Tomblin to review discovery documents to be produced in response to Plaintiff's 2nd Requests for Production of Documents.
2/7/2008	0.3	\$ 22.50	Review documents received from client to determine whether or not they will be produced in discovery responses.
2/7/2008	1.4	\$ 105.00	Prepare final draft of Defendant's Responses to Plaintiff's Second Request for Production of Documents.
2/8/2008	0.2	\$ 15.00	Prepare final draft of defendant's Responses to Plaintiff's 2nd Requests for Production of Documents.
2/8/2008	0.2	\$ 15.00	Email and call to Linda Tomblin regarding approval and verification of discovery responses.
2/8/2008	0.5	\$ 37.50	Prepare final set of documents produced in response to Plaintiff's 2nd Requests for Production of Documents.

EXHIBIT "C"
Recap of Time
Caren Burke

2/12/2008	1.3	\$	97.50	Prepare Supplemental Response to Plaintiff's 2nd Requests for Production of Documents.
2/12/2008	0.1	\$	7.50	Call to Linda Tomblin regarding Supplemental Discovery Response.
	8.9	\$	667.50	

EXHIBIT "D"
Recap of Time
Carla Herndon

DATE	HOURS	AMOUNT	DESCRIPTION
7/20/2007	0.8	\$ 60.00	Prepare draft Answers to Plf Interrogatories and Requests for Production (1st set).
8/1/2007	0.2	\$ 15.00	Call to client regarding info needed to file discovery responses and Answer to complaint.
8/2/2007	0.4	\$ 30.00	Review additional information received from client to be used to update defendant's response to plaintiff's request for production, request for admission and interrogatories.
8/2/2007	0.7	\$ 52.50	Update interrogatories, request for production and request for admission with additional information received from client.
8/2/2007	0.4	\$ 30.00	Review additional information received from client for use in drafting defendant's responses to request for production, request for admission and interrogatories.
8/2/2007	0.8	\$ 60.00	Update responses to plaintiff's request for production, interrogatories and requests for admission.
8/3/2007	0.6	\$ 45.00	Review additional documents received from Linda to be included in response to requests for production requests for production
8/3/2007	0.3	\$ 22.50	Update responses to request for production, request for admission and interrogatories with additional documents received from client.
8/3/2007	0.3	\$ 22.50	Review Answer to Complaint with client (telephonically).
8/3/2007	0.4	\$ 30.00	Revise discovery answers with additional comments and information from client.
8/3/2007	0.4	\$ 30.00	Update responses to requests for admission, request for production and interrogatories with additional information supplied regarding request for admission #7.
	5.3	\$ 397.50	

2008 APR 17 AM 10: 29

CLERK DISTRICT COURT

John H. Thompson
DEPUTY *PS*

218

COSTS AS A MATTER OF RIGHT - Idaho Rule of Civil Procedure 54(d)(1)(C)

(1) Court Filing Fees:

6/12/07 - Clerk of the Court, Kootenai County
Appearance fee \$ 58.00

8/03/07 - Clerk of the Court, Kootenai County
Answer (filing fee) \$ 14.00

SUBTOTAL: \$ 72.00

**(2) Actual Fees For Service Of Any Pleading Or Document In
The Action Whether Served By A Public Officer Or Other
Person:**

Defendant has no costs to submit within this category

**(3) Witness Fees of \$20.00 per day for each day in which a
witness, other than a party or expert, testifies at a
deposition or in the trial of an action:**

Defendant has no costs to submit within this category

**(4) Travel Expenses of Witnesses who travel by private
transportation, other than a party, who testify in the trial of
an action, computed at the rate of \$.30 per mile, one way,
from the place of residence, whether it be within or without
the state of Idaho; travel expenses of witnesses who travel
other than by private transportation, other than a party,
computed as the actual travel expenses of the witness not to
exceed \$.30 per mile, one way, from the place of residence
of the witness, whether it be within or without the state of
Idaho:**

Defendant has no costs to submit within this category.

- (5) **Expenses or charges of certified copies of documents admitted as evidence in a hearing or trial of an action:**

Defendant has no costs to submit within this category.

- (6) **Reasonable costs of the preparation of models, maps, pictures, photographs, or other exhibits admitted in evidence as exhibits in a hearing or trial of an action, but not to exceed the sum of \$500 for all of such exhibits of each party:**

Defendant has no costs to submit within this category.

- (7) **Cost of all bond premiums:**

Defendant has no costs to submit within this category.

- (8) **Reasonable expert witness fees for an expert who testifies at a deposition or at a trial of an action not to exceed the sum of \$2,000 for each expert witness for all appearances;**

Defendant has no costs to submit within this category.

- (9) **Charges for reporting and transcribing of a deposition taken in preparation for trial of an action, whether or not read into evidence in the trial of an action:**

Defendant has no costs to submit within this category.

(10) **Charges for one (1) copy of any deposition taken by any of the parties to the action in preparation for trial of the action:**

(a)	Bart Kleng (Naegeli Reporting)	\$353.50
(b)	Bruce Tomblin (Naegeli Reporting)	\$137.50
(c)	Linda Tomblin (Naegeli Reporting)	\$673.75
(d)	DVD copy of audio visual deposition of Linda Tomblin, Bruce Tomblin and Bart Kleng	\$53.00

TOTAL COSTS AS A MATTER OF RIGHT PURSUANT TO IRCP 54(d)(1)(C):	\$1,289.75
---	-------------------

DISCRETIONARY COSTS:

DISCRETIONARY COSTS PURSUANT TO RULE 54(d)(1)(D):

Photocopies:

- North Idaho Blueprint -	\$ 1.59
(To provide copy of blueprint requested through discovery)	
Paine Hamblen, LLP - photocopies (see below)	\$ 108.20
8/3/07 - Answers & responses to Plaintiff's first interrogatories, Requests for production and requests for admission (copies of client documents provided)	(\$22.20)
11/12/07 - Copies (as requested by plaintiff counsel) of documents provided by Bart Kleng	(\$70.60)
2/8/08 - Response to Plaintiff's Second Requests for Production of Documents (copies of client documents provided)	(\$15.40)

TOTAL DISCRETIONARY COSTS SOUGHT PURSUANT TO IRCP 54(d)(1)(D):	<u>\$ 109.79</u>
---	-------------------------

All of the discretionary costs claimed by defendants were reasonably and necessarily incurred to defend the claims of plaintiffs and should in the interest of justice be assessed against plaintiffs.

ATTORNEY FEES:

Patrick E. Miller 34.6 hrs @ \$200.00 per hour: (through December 31, 2007)	\$ 6,920.00
Patrick E. Miller 19.3 hrs @\$250.00 per hour: (January 1, 2008 to present)	\$ 4,825.00
Amy C. Bistline 2.5 hrs @ \$175.00 per hour	\$ 437.50

PARALEGAL FEES:

Caren Burke 8.9 hrs @ \$75.00 per hour	\$ 667.50
Carla Herndon 5.3 hrs @ \$75.00 per hour:	\$ 397.50

TOTAL ATTORNEY AND PARALEGAL FEES PURSUANT TO IRCP 54(e)(1):	<u>\$13,247.50</u>
---	---------------------------

RECAPITULATION

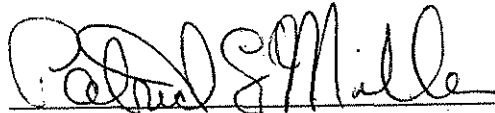
Total costs as of right:	\$1,289.75
Total discretionary costs:	\$ 109.79
Total fees:	\$13,247.50

TOTAL DUE:	<u>\$14,647.04</u>
-------------------	---------------------------

I certify that the foregoing items of cost were actually and necessarily incurred in the defense of this action in behalf of defendants, were paid, are correct, and are in compliance with I.R.C.P. 54(d)(1)(C).

I certify that the foregoing items of cost were actually and necessarily incurred in the defense of this action in behalf of defendants were paid, are correct, and are in compliance with I.R.C.P. 54(d)(1)(C) and I.R.C.P. 54(d)(1)(D).

DATED this 16th day of April, 2007.


A handwritten signature in cursive script, appearing to read "Patrick E. Miller", is written over a horizontal line.

PATRICK E. MILLER
Attorney for Defendant

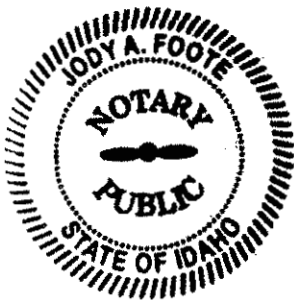
STATE OF IDAHO)
 : ss.
County of Kootenai)

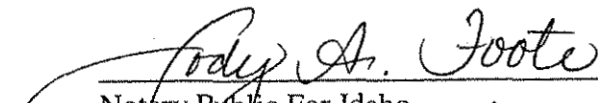
Patrick E. Miller, being first duly sworn on oath, deposes and states:

I am the attorney of record for the above-named defendant; I have read the contents of the foregoing Memorandum of Costs and Attorney Fees; that to my best of knowledge and belief, the items therein are true and correct; that the costs claims are in compliance with Rule 54(d)(5), I.R.C.P., and that the items in the above bill have been reasonably and necessarily incurred in this action.


Patrick E. Miller

SUBSCRIBED AND SWORN to before me this 16th day of April, 2008.



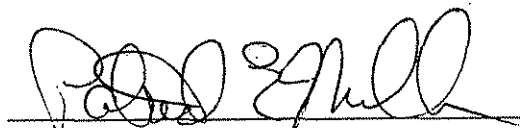

Notary Public For Idaho
Residing at: Coeur d'Alene
Commission Expires: 7/10/2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of April, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Steven C. Wetzel
Kevin P. Holt
WETZEL & WETZEL, PLLC
1322 Kathleen Avenue, Suite 2
Coeur d'Alene, ID 83815-8339

- ☒ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX) to: 664-6741


Patrick E. Miller

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STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED
2008 APR 29 PM 4:59

CLERK DISTRICT COURT

DEPUTY *Patty B. King*

Steven C. Wetzel, ISB #2988
Kevin P. Holt, ISB #7196
WETZEL, WETZEL BREDESON & HOLT, PLLC
1322 Kathleen Ave., Suite 2
Coeur d'Alene, Idaho 83815-8339
Telephone: (208) 667-3400
Facsimile: (208) 664-6741

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMSTECHNOLOGIES,

Defendant.

Case No. CV-07-4062

PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION TO DISALLOW
COSTS AND ATTORNEY FEES

COMES NOW the Plaintiff, by and through counsel of record, Wetzel, Wetzel, Bredeson & Holt, P.L.L.C., and submits this Memorandum in Support of Motion to Disallow Costs and Attorney Fees.

COSTS

Defendant submits as costs as a matter of right one copy of the depositions of Bart Kleng, Bruce Tomblin, and Linda Tomblin. Defendant also requests \$53.00 for a DVD copy of audio

visual depositions of Bart Kleng, Bruce Tomblin, and Linda Tomblin. Plaintiff objects to the cost of the DVD copy of the identical depositions as a second copy and not a cost as a matter of right pursuant to I.R.C.P. 54(d)(1)(c).

Further, Defendant claims as Discretionary Costs, the cost of blueprints and photocopies. These are costs associated with general operations of a law firm and do not fit the definition of "necessary and exceptional costs." The requested discretionary costs in the amount of \$109.79 should be denied.

ATTORNEY FEES

Idaho Rule of Civil Procedure 54(d)(6) provides in pertinent part:

In any civil action the court may award reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract. (Emphasis added)

Defendant has identified no provision of contract, nor any statute that provides for an award of attorney fees. Although the court announced from the bench that there was a valid contract in this case, Plaintiff contends that the court's ruling describes a transaction that does not meet the legal definition of an enforceable contract. If the document in question does constitute a contract between Plaintiff and Defendant, such document does not contain an attorney fee provision, and no fees can be awarded thereby. If, however, the document in question does not possess all the necessary elements of a legally enforceable contract, then there is no commercial transaction and there can be no applicable Idaho statute that provides for an award of attorney fees. Consequently, Defendant's application for attorney fees should be denied *in toto*.

Further, should attorney fees be awarded in this case, the amount of \$1,065.00 listed for paralegal fees should be denied. The above cited IRCP 54(d)(6) provides that the court may

award attorney fees, "which at the discretion of the court may include paralegal fees."

Defendant has not provided the credentials or experience of the "paralegals" identified in Defendant's memorandum or affidavit. Consequently, any award of fees should be reduced by \$1,065.00.

CONCLUSION

For the reasons set forth above, Defendant's application for attorney fees and discretionary costs should be denied. Further, should fees be awarded the paralegal fees should be denied.

DATED this 29 day of April, 2008.

WETZEL, WETZEL, BREDESON &
HOLT, P.L.L.C.

By

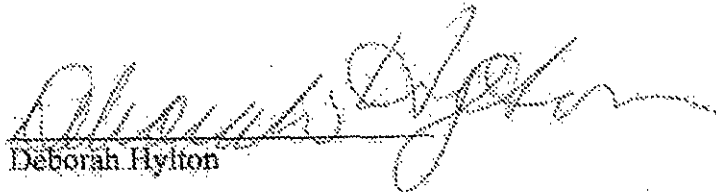
Kevin P. Holt

Attorneys for Plaintiff

CERTIFICATE OF DELIVERY

I hereby certify that on the 29th day of April, 2008, I served the foregoing document upon:

<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 664-6338	PATRICK E. MILER AMY C. BISTINE PAIEN HAMBLER LLP 701 E Front Avenue, Suite 101 P.O. Box E Coeur d'Alene, ID 83816-2530 <i>Attorneys for Defendant</i>
--	--


Deborah Hylton

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STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED

2008 APR 29 PM 4:59

CLERK DISTRICT COURT

DEPUTY

Steven C. Wetzel, ISB #2988
Kevin P. Holt, ISB #7196
WETZEL, WETZEL BREDESON & HOLT, PLLC
1322 Kathleen Ave., Suite 2
Coeur d'Alene, Idaho 83815-8339
Telephone: (208) 667-3400
Facsimile: (208) 664-6741

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMSTECHNOLOGIES,

Defendant.

Case No. CV-07-4062

MOTION TO DISALLOW COSTS AND
ATTORNEY FEES

COMES NOW the Plaintiff, by and through counsel of record, WETZEL, WETZEL, BREDESON & HOLT, P.L.L.C., pursuant to I.R.C.P. 54(d)(6) and 54(e)(6), and hereby moves this Court to disallow certain costs and attorney's fees as set forth in Defendant's Memorandum of Costs and Affidavit in Support of Defendant's Claim for Attorney Fees.

This motion is based upon the records and files herein, and Plaintiff's Memorandum in Support of Motion to Disallow Costs And Attorney Fees.

Plaintiff requests oral argument on this motion.

DATED this 29th day of April, 2008.

WETZEL, WETZEL, BREDESON &
HOLT, P.L.L.C.

By 

Kevin P. Holt
Attorneys for Plaintiff

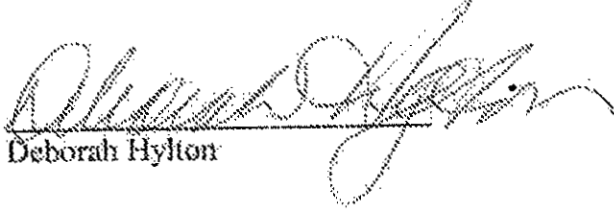
CERTIFICATE OF DELIVERY

I hereby certify that on the 29th day of April, 2008, I served the foregoing document upon:

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile: 664-6338

PATRICK E. MILER
AMY C. BISTINE
PAIEN HAMBLIN LLP
701 E Front Avenue, Suite 101
P.O. Box E
Coeur d'Alene, ID 83816-2530

Attorneys for Defendant


Deborah Hylton

s:\files\spokane structures, inc\pleadings\motion to disallow costs and attorney fees\motion to disallow costs and attorney fees.doc

PATRICK E. MILLER - ISBA #1771
 PAINE HAMBLEN LLP
 701 Front Avenue, Suite 101
 P.O. Box E
 Coeur d' Alene, ID 83816-2530
 Telephone: (208) 664-8115
 Facsimile: (208) 664-6338

STATE OF IDAHO }
 COUNTY OF KOOTENAI } SS
 FILED:

2008 MAY -2 PM 3:59 ³⁵⁹ *kne*

CLERK DISTRICT COURT
Patty Barkley
 DEPUTY *VS*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
 Washington Corporation,

Plaintiff,

vs.

EQUITABLE INVESTMENT, L.L.C., an
 Idaho Limited Liability Company, a.k.a.
 SYSTEMS TECHNOLOGIES,

Defendant.

)
) Case No. CV-07-4062
)
) **ADDENDUM TO COST BILL**
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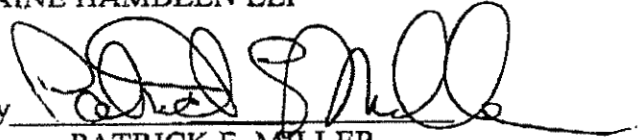
Comes now, Defendant Equitable Investments, LLC pursuant to Rule 54(e)(5) and in
 accordance with the time constraints of Rule 54(d)(5) and further specifies that its request for
 attorney fees as costs in this matter is predicated upon IC 12-130(3).

DATED this 2nd day of May, 2008.

ADDENDUM TO COST BILL - 1

PAINE HAMBLEN LLP

By

A handwritten signature in black ink, appearing to read "Patrick E. Miller", written over a horizontal line.

PATRICK E. MILLER
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of May, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Steven C. Wetzel
Kevin P. Holt
WETZEL & WETZEL, PLLC
1322 Kathleen Avenue, Suite 2
Coeur d'Alene, ID 83815-8339

- ☒ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX) to: 664-6741



Patrick E. Miller

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2008 MAY 16 AM 10:36

Patty Spiley
DEPUTY #13

STATUS OF THE MATTER

On April 30, 2008, the Court entered an order granting Defendant's motion for summary judgment. The Court has not yet entered Judgment in this matter. Prior to submission of the Judgment, Defendant submitted its Memorandum of Costs, an Addendum to that Cost Bill, and Plaintiff submitted its objection to the Cost Bill.

DEFENDANT IS ENTITLED TO COSTS AS THE PREVAILING PARTY

The Plaintiff has objected to requested cost reimbursement requests for a copy of a DVD of an audiovisual deposition of Bart Kleng, Bruce Tomblin and Linda Tomblin.

The Plaintiff in this matter gave notice of an intent to take those parties' depositions by "audio visual deposition".

The Defendant requested copies of the depositions and was required, by Plaintiff, to pay for that copy. While there was both a "paper transcript" and a "digital" or DVD transcript, it was incumbent upon the Defendant, as a prudent defense request, to request a copy of both as one copy of the same deposition. The requested cost reimbursement is appropriate and should be granted by the Court.

The Plaintiff further objects to cost of blueprint and photocopies, which is the copy expense necessary to provide Plaintiff with the requested materials pursuant to a Rule 34, request for production. That was a cost incurred because of Plaintiff's request and should be granted.

ATTORNEY FEES

Plaintiff's complaint asserted that Plaintiff and Defendant entered into an agreement whereby Plaintiff would design and construct work for Defendant. Plaintiff's Complaint, ¶ 3. Plaintiff asserted several theories of recovery, including breach of contract, specific performance, breach of contract, money damage, quasi-contract, contract implied in fact and promissory estoppel. Plaintiff asserted that, pursuant to the terms of the contract, it would be entitled to attorney fees under Idaho Code § 12-120. Plaintiff's Complaint, ¶ 17.

Clearly, the Defendant is the prevailing party in this matter since the Court has granted Defendant's motion for summary judgment and dismissed Plaintiff's Complaint and claims against this Defendant.

Plaintiff asserts that the Court's determination that there was no contract obligation, which was breached by Defendant, precludes the award of attorney fees pursuant to Idaho Code § 12-120(3).

In *Freiburger v. J-U-B Engineers, Inc.*, 141 Idaho 415, 423, 111 P.3d 100, 108, the Court held that, where a party alleges the existence of a contractual relationship of a type embraced by Idaho Code § 12-120(3), the claim triggers the application of the statute.

In *Lexington Heights v. Crandlemire*, 140 Idaho 276, 287, 92 P.3d 526, 537 (S.Ct., 2004) the Court there held that, where a party alleges the existence of a contract that would be a commercial transaction under Idaho Code § 12-120(3), the claim triggers the application of the

statute and the prevailing party may recover attorney fees even if no liability under the contract is established.

In *Tri State Land Co., Inc., v. Roberts*, 131 Idaho 835, 840, 965 P.2d 195, 200 (Ct.App., 1998), the Court there stated that commercial transactions, which trigger the application of Idaho Code § 12-120(3), is defined as all transactions, except transactions for personal and household purposes.

PARALEGAL FEES

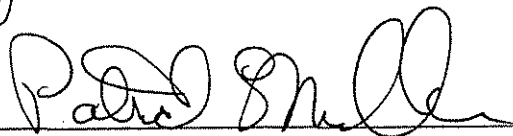
Plaintiff objects to the paralegal fees upon the grounds that the "experience of the paralegal" is not shown. There is no authority to require an attestation as to a paralegal's experience in order to award such fees. The Plaintiff has not proposed that the time, or hourly rate are unreasonable. The Defendant requests an award of the paralegal fees pursuant to the cost bill.

CONCLUSION

The Plaintiff had alleged the existence of a contract, for the purpose of designing and constructing a commercial building. It is clear, as addressed by the various appellate courts that a commercial transaction was the gravamen of the complaint. The fact that Defendant prevailed upon the suit, does not remove the entitlement for an award of attorney fees under Idaho Code § 12-120(3).

The Defendant requests that when the Court enters judgment in this matter, it enter a judgment to include dismissal of the Plaintiff's Complaint, Plaintiff's claims, award of costs, and an award of attorney fees.

DATED this 14th day of May, 2008.



PATRICK E. MILLER
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of May, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Steven C. Wetzel
Kevin P. Holt
WETZEL & WETZEL, PLLC
1322 Kathleen Avenue, Suite 2
Coeur d'Alene, ID 83815-8339

- ☒ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ TELECOPY (FAX) to: 664-6741


Patrick E. Miller

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STATE OF IDAHO }
COUNTY OF KOOTENAI } SS.
FILED: 796712

2008 MAY 23 PM 4:28

CLERK DISTRICT COURT

DEPUTY

Steven C. Wetzel, ISB #2988
Kevin P. Holt, ISB #7196
WETZEL, WETZEL, BREDESON & HOLT, PLLC
1322 Kathleen Ave., Suite 2
Coeur d'Alene, Idaho 83815-8339
Telephone: (208) 667-3400
Facsimile: (208) 664-6741

Attorneys for Appellant SPOKANE STRUCTURES, INC.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a
Washington Corporation,

Appellant,

vs.

EQUITABLE INVESTMENT, L.L.C., an
Idaho Limited Liability Company, a.k.a.
SYSTEMSTECHNOLOGIES,

Respondent.

Case No. CV-07-4062

NOTICE OF APPEAL

Fee \$86.00
Rule 23(1)

TO THE ABOVE-NAMED RESPONDENT, EQUITABLE INVESTMENT, L.L.C., AN
IDAHO LIMITED LIABILITY COMPANY, A.K.A. SYSTEMSTECHNOLOGIES, AND
ITS ATTORNEY OF RECORD

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, SPOKANE STRUCTURES, INC., a Washington
Corporation ("SPOKANE STRUCTURES"), appeals against the above-named Respondent to
the Idaho Supreme Court from the Order granting summary judgment entered in the above-
entitled action on the 15th day of April, 2008, by the Honorable John P. Luster.

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2. The party has a right to appeal to the Idaho Supreme Court, and the Order granting summary judgment described in paragraph 1 above is an appealable order under and pursuant to Rule 11(a) of the Idaho Appellate Rules.

3. A preliminary statement of the issues on appeal which SPOKANE STRUCTURES intends to assert in the appeal is set forth below; provided, any such list of issues on appeal shall not prevent SPOKANE SRUCTURES from asserting other issues on appeal:

3.1 Did the District Court err in holding that the heart of this issue is a breach of contract?

3.2 Did the District Court err in holding that the express contract is clear and unambiguous?

3.3 Did the District Court err in holding that an express contract which does not require any performance by one party is a valid contract?

3.4 Did the District Court err in holding that no equitable remedies lie in the matter.

3.5 Did the District Court draw all reasonable inferences in favor of the non-moving party?

3.6 Did the District Court liberally construe all facts of record in favor of the nonmoving party?

3.7 *Did the District Court err in finding no contested issues of material facts?*

4. A reporter's transcript is requested. SPOKANE STRUCTURES requested a standard transcript from the reporter.

5. SPOKANE STRUCTURES requests that all of the documents presented to the Court and made part of the record of the hearing before the Honorable John P. Luster on this matter be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

6. I certify that a copy of this Notice of Appeal has been served on the reporter:

- a. That the name of the reporter is Anne MacManus.
- b. That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.
- b. That the estimated fee for preparation of the clerk's record has been paid.
- c. That the appellate filing fees have been paid.
- d. That service of this Notice of Appeal has been made upon all parties

required to be served pursuant to Rule 20, Idaho Appellate Rules.

DATED this 23rd day of May, 2008.

WETZEL, WETZEL, BREDESON &
HOLT, P.L.L.C.

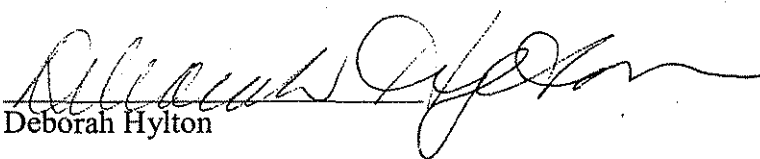
By

Kevin P. Holt
Attorneys for Appellant

CERTIFICATE OF DELIVERY

I hereby certify that on the 23 day of May, 2008, I served the foregoing document upon:

<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 664-6338	PATRICK E. MILER AMY C. BISTINE PAIEN HAMBLÉN LLP 701 E Front Avenue, Suite 101 P.O. Box E Coeur d'Alene, ID 83816-2530 <i>Attorneys for Respondent</i>
<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:	Anne MacManus Court Reporter 501 Government Way Coeur d'Alene, ID 83816


Deborah Hylton

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STATE OF IDAHO
COUNTY OF KOOTENAI } ss
FILED:

2008 JUN 17 PM 3:52

CLERK DISTRICT COURT
[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SPOKANE STRUCTURES, INC., a)	
Washington Corporation,	)	Case No. CV-07-4062
)	
Plaintiff,	)	ORDER
)	
vs.)	
)	
EQUITABLE INVESTMENT, L.L.C., an)	
Idaho Limited Liability Company, a.k.a.)	
SYSTEMS TECHNOLOGIES,)	
)	
Defendant.)	
)	

This matter came on to be heard on May 21, 2008, upon Plaintiff's objection to Defendant's Memorandum of Costs, including a request for attorney fees.

Plaintiff, Spokane Structures, Inc., appeared by its attorney, Steven C. Wetzel and Defendant, Equitable Investment, LLC, appeared by its attorney, Patrick E. Miller.

The Court, having read and considered the records and file in this matter, the Memorandum of Costs, the Affidavit in Support of Defendant's Claim for Attorney Fees, the Addendum to the Memorandum of Costs, Defendant's Memorandum in Support of its Cost Bill, the Plaintiff's Motion to Disallow Costs and Attorney Fees, the Plaintiff's Memorandum in Support of its Motion, and having considered the oral argument of counsel for the respective parties, and in accordance with,

and reflected by, the Court's analysis, findings of fact, and conclusions of law as set forth upon the record of the hearing on May 21, 2008;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant Equitable Investments, LLC is the prevailing party; that the subject matter of the litigation constituted a commercial transaction as defined by Idaho Code § 12-120(3); that the Defendant is entitled to an award of costs, as addressed below, and an award of attorney fees, as addressed below;

NOW THEREFORE, it is hereby ordered that Defendant's request for costs as a matter of right, in accordance with I.R.C.P. 54(b)(1)(C) is hereby granted, subject to denial of the Defendant's request for a DVD copy of audiovisual depositions for a total granted right of costs pursuant I.R.C.P. 54(b)(1)(C) in the amount of \$1,236.75; that Defendant's request for discretionary costs pursuant to 54(b)(1)(B) is denied; that Defendant's request for attorney fees and paralegal fees in accordance with Idaho Code § 12-120(3) is granted, subject to denial of a specific requested paralegal fee on November 9, 2007, in the amount \$37.50, for total granted attorney fees in the sum of \$13,210, and for total granted costs and attorney fees in the sum of \$14,446.75, which shall be entered upon judgment in favor of the Defendant against the Plaintiff.

DATED this 15th day of June, 2008.



HONORABLE JOHN P. LUSTER

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of June, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kevin P. Holt
Steven C. Wetzel
WETZEL & WETZEL, PLLC
1322 Kathleen Avenue, Suite 2
Coeur d'Alene, ID 83815-8339

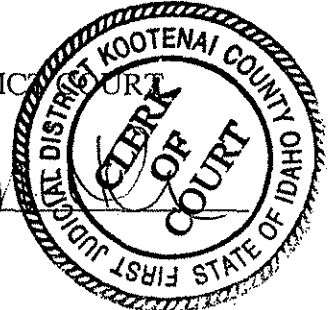
☐ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ TELECOPY (FAX) to: (208) 664-6741

Patrick E. Miller
Attorney at Law
701 Front Avenue, Suite 101
P.O. Box E
Coeur d'Alene, ID 83816-0328

☐ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ TELECOPY (FAX) to: (208) 664-6338

DANIEL J. ENGLISH
CLERK OF THE DISTRICT COURT

By: [Signature]
DEPUTY



IN THE SUPREME COURT OF THE STATE OF IDAHO

SPOKANE STRUCTURES, INC., a	)	CV 2007-4062
Washington Corporation)	
Petitioner/Appellant)	
)	
vs.)	
)	
EQUITABLE INVESTMENT, LLC.,)	
AKA Systems Technologies	)	SUPREME COURT
	)	DOCKET 35349
Respondent.)	
)	
)	
)	

I, Daniel J. English, Clerk of District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the above and foregoing record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

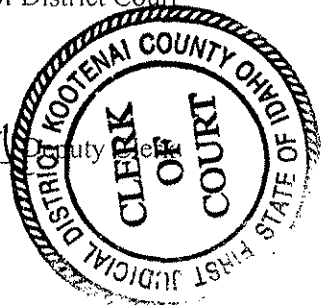
I certify that the Attorneys for the Appellant and Respondent were notified that the Clerk's Record and Reporter's Transcript were complete and ready to be picked up, or if the attorney is out of town, the copies were mailed by U.S. mail; postage prepaid, on the 23 day of June, 2008.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai, Idaho this 23 day of June, 2008.

DANIEL J. ENGLISH

Clerk of District Court

By: 



IN THE SUPREME COURT OF THE STATE OF IDAHO

SPOKANE STRUCTURES, INC., a	)	CV 2007-4062
Washington Corporation)	
Petitioner/Appellant)	
)	
vs.)	
)	
EQUITABLE INVESTMENT, LLC.,)	
AKA Systems Technologies	)	SUPREME COURT
	)	DOCKET 35349
Respondent.)	
)	
)	

CLERK'S CERTIFICATE OF SERVICE

I, Daniel J. English, Clerk of District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record to each of the Attorneys of Record in this cause as follows:

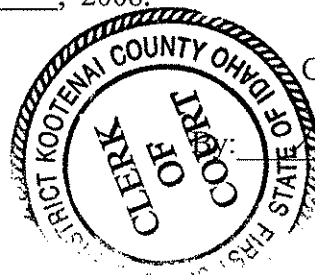
Attorney for Respondents

Patrick E Miller
Paine Hamblen
701 Front Avenue, Suite 101
Coeur d'Alene, ID 83816

Attorney for Petitioner

Steven C. Wetzel
Wetzel & Wetzel
1322 Kathleen Avenue, Suite 2
Coeur d'Alene, ID 83815

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Kootenai, Idaho this 23 day of June, 2008.



DANIEL J. ENGLISH
Clerk of the District Court

[Signature]
Deputy